

# CONGRESS AND THE CHAIN STORES



## The Pro and Con Monthly

August - September, 1930

How the Chain Store Originated  
Federal Action Dealing With Question  
Pending Anti-Chain Store Legislation  
How U. S. Supreme Court Touches Issue  
The Packers and the Chain Store Problem

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### Pro and Con Arguments

by

U. S. Senators, Representatives, Lawyers and Business  
Leaders



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# The Congressional Digest

The Pro and Con Monthly

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## Contents for This Month

This Month: A Special Number

Next Month: Regular Features Resumed

|  |     |
|--|-----|
| Foreword .....   | 193 |
| The Genesis of the Chain Store.....  | 194 |
| Steps Taken by the Federal Government (Chronology) .....   | 196 |
| State Taxation of Chain Stores .....   | 197 |
| Senate Directs Federal Trade Commission to Investigate Chain Stores.....                             | 198 |
| Membership of Federal Trade Commission.....  | 198 |
| Powers and Functions of Federal Trade Commission .....   | 199 |
| Progress of Chain Store Investigation.....   | 200 |
| Present Laws Governing Price Maintenance.....  | 201 |
| Anti-Chain Store Legislation in Congress.....  | 202 |
| Text of Kelly Bill.....  | 202 |
| Text of Jones Bill .....   | 202 |
| U. S. Supreme Court Says Price Fixing Illegal.....   | 203 |
| Mr. Justice Charles Evans Hughes, Opinion .....  | 203 |
| Mr. Justice Oliver Wendell Holmes, Dissent.....  | 203 |
| Will Kelly Price Fixing Bill Prevent Monopolies and Unfair Trade Practices?.....                     | 205 |
| Hon. Clyde Kelly (Pro) vs. Hon. George Huddleston (Con) .....  | 205 |
| Hon. Clarence F. Lea (Con) .....   | 206 |
| Maj. Benjamin H. Namm, (Con).....  | 206 |
| Should Meat Packers be Permitted to Enter the Chain Store Field?.....                                | 209 |
| Hon. John B. Kendrick (Pro) vs. Hon. Hugo F. Black (Con) .....                                       | 209 |
| Syme, Faulkner, Hartson and Hogan, Attorneys for Armour, etc., (Pro) vs. W. K. Henderson (Con) ..... | 210 |
| Do Chain Stores Benefit the Farmer?.....   | 212 |
| J. C. Penney (Pro) vs. J. H. McLaurin (Con) .....  | 212 |
| Does the Chain Stores System Threaten the Nation's Welfare? .....                                    | 213 |
| National Wholesale Grocers' Association (Pro) vs. R. W. Lyons (Con).....                             | 213 |
| J. Frank Grimes (Pro) vs. Godfrey F. Lehar (Con) .....   | 215 |
| Philip Lieber (Pro) vs.....  | 219 |
| William Henry Smith (Con).....   | 220 |

Numbers of The Congressional Digest are indexed in the Readers' Guide

# The Congressional Digest

Aug.-Sept., 1930

Vol. 9 - Nos. 8-9

SPECIAL NUMBER

## Congress and the Chain Stores

How the Chain Store Originated  
How the Government Touches the Chains  
The Federal Trade Commission Investigation  
The Department of Justice and the Packers

The Supreme Court Price Fixing Decision  
Anti-Chain Store Bills in Congress  
State Taxation of the Chain Stores  
Full Pro and Con Discussion of Problem

### Foreword

**I**N presenting to its readers a picture of the chain store problem, THE CONGRESSIONAL DIGEST seeks primarily to set forth how this question touches the United States Government, with special attention to what powers the Congress has in the matter.

The source of the authority of Congress to deal with any problem involving commerce lies in the Constitution of the United States.

Article 1, Section 8, of the Constitution reads:

"The Congress shall have the Power

"(1) To Lay and collect Taxes, Duties, Imposts and Excises, \* \* \* but all Duties, Imposts and Excises shall be uniform throughout the United States;

"(3) To regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes;"

Section 1 of Amendment XIV of the Constitution reads:

"\* \* \* No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws."

The provision of Article 1 quoted above is generally referred to as the interstate commerce provision of the Constitution and it is under its authority that Congress has enacted all laws relating to interstate commerce, including the anti-trust and anti-monopoly laws cited in connection with the chain store question.

The tax provisions of Article 1 of the Constitution set forth the powers and limitations of Congress in making tax laws and are cited in connection with the question of what Congress may or may not do in the matter of tax legislation directed at the chain stores.

The provisions of Amendment XIV limit the power of the States in the matter of laws to the extent that they may not be discriminatory.

At the present time three Government agencies are dealing directly with the chain store problem as such—the Congress, the Department of Justice and the Federal Trade Commission.

How these three agencies are approaching the problem and the progress of their efforts so far, together with a pro and con discussion of the entire chain store question will be found in the ensuing pages.

# The Genesis of the Chain Store

## Its Place in Our Mercantile History

Brief Paragraphs from "These Merchandizing Changes and the National Magazine," published by The Cromwell Publishing Company, New York, 1929.



METHODS of selling and merchandising in America have been completely reversed in the last fifty years. During this period we have literally gone through a mercantile revolution—and the end is not yet in sight.

For the sake of the picture, and what is to follow, turn back the calendar to about the year 1850. Imagine for a moment that you are a "special representative" for H. W. Carter, one of America's first exponents of chain business. You are driving a wagon resembling a circus chariot hauled by four fast horses. Over your shoulder is strapped a loaded shotgun for transactions with road agents, thugs and footpads. Inside the wagon, carefully arranged on shelves and hooks, in drawers and special niches—all as neat as a ship's chart room—is merchandise to set hearts yearning and purse strings loosening.

### A Wholesaler on Wheels

A trader whose coming is eagerly awaited in the sparsely settled countrysides and widely scattered towns. You look on yourself as the ultimate note in merchandising—the highly organized and grown-up offspring of the trudging peddler who heretofore had supplied the wants of the thinly populated nation. You are actually a wholesaler on wheels, selling to retail stores at country crossroads and in small towns and hamlets. You owe your existence to the spread of the retail store idea from the large cities and centers of population to the small communities, which hitherto have been the exclusive stamping ground of the retail peddler. These early stores have largely supplanted the former flourishing business of retail peddling, and taken over its functions as a distributor of merchandise. And the resulting system of wholesale peddling, typified by Mr. Carter's many-wagoned organization, illustrates one of the earliest and most radical changes in the distribution of merchandise.

### The Old Fashioned Store

The period which actually opens our story begins in the 1870's and runs on into the early 1900's. It is the era of our ancient friend Sitting Bull, the wooden Indian, who stood guard in front of the old-fashioned tobacconist's shop. Sitting Bull showed you where you could buy cigars and tobacco. His master's stock in trade was as nondescript as that of the grocer next door, who was in the habit of dipping pickles out of an open pail, chasing the cat from the cracker barrel so that he could fill the good wife's order, and always forgetting to put that curious wire cage contraption back over the cheese after he had sliced off the necessary pound or two.

It was the day of merchandise in bulk. Who ever heard of buying soups in cans, breakfast foods in neat boxes, or coffee in tins, in your grandmother's day? The bare suggestion would have been tantamount to opening the window in the "parlor" or offering a cigarette to mother!

Prior to 1900 even perfume was sold by the druggist in bulk from large bottles and practically all candy sales were also in bulk. To be sure, as early as 1878, there were a few things sold in packages—such as soda known as saleratus, Baker's Chocolate, and a few canned goods such as tomatoes, salmon and peaches. But to quote Earnest Elmo Calkins in a recent article in the *Woman's Home Companion*. "A housewife felt disgraced when she used canned goods. They were emergency rations—sure sign that her larder was empty."

The tempo of American life through the seventies, eighties and nineties was still comparatively slow. In business it was still the age of production, with the emphasis placed on turning out goods and perfecting the machinery for turning out more and still more of them.

### The Genesis of the Chain System

It has been said that John Wanamaker, long before he opened his "Grand Depot," really uncovered the chain idea, although he was all unconscious of the fact and never fully developed it. This statement is based on the premise that Wanamaker, many years before his department store, opened a small dry goods establishment in Philadelphia which was so successful that he started a second in the same city and a third in Pittsburgh.

Again there is George Gilman, who bought the historic shipload of tea in 1859, secured a tiny shop in Vesey Street, New York, painted the shop front red, hired George Hartford as manager, and proceeded to dispose of the tea at a dollar a pound. Hartford, the manager dreamed dreams and hitched the dynamo of action to them with the result that other red front stores sprang up and The Great Atlantic & Pacific Tea Company was born.

But in delving back into the beginnings of this merchandising device called the chain, which has had such a revolutionary effect on business—don't forget Hudson's Bay Company, flourishing in America as early as 1750, with hundreds of trading posts and banks; or the Mitsui chain system of Japan (and later of the world at large) which grew its roots in 1643.

The first contribution made by the chain store to the growing complexities of business was the idea of quantity buying. As we have seen, this was the first operation of the first A. & P. store (although the name A. & P. was yet to be invented).

### The Birth of the Five and Ten Cent Store

Some years later, in 1879, a ten dollar a week clerk in Watertown, New York, made a discovery that in time was to unsettle old line business methods still further. This clerk asked permission to assemble a group of miscellaneous articles, which hitherto had failed to move, on a special counter and sell them for a nickel each. They moved fast. And you have guessed the name of the clerk—Frank W. Woolworth. On borrowed capital, Woolworth



went to Utica and opened the first five cent store. It soon failed. Undaunted, he sold half his stock for what he could get, packed up the rest and shipped it to Lancaster, Pa., where he opened another store that did not fail. Soon Woolworth married the dime to the nickel in his business, and opened other "five and tens".

Following Woolworth in fairly quick succession, more chains were organized such as those of James Butler, Kroger, McCrory, Bohack, Childs Restaurants, May Drug, Ginter Co. (later First National), Kress, Kresge, Jewel Tea Company, National Tea Company and others.

#### *Growth of the Chains Since 1900*

This was all before 1900 when chain store growth was just beginning. In fact, it is only since 1900 that the chains may be said to have achieved real momentum — and only since the World War that they have become a dominant factor in distribution.

Up to 1900 The Great Atlantic and Pacific Tea Company had less than 200 stores. These grew to 1,000 in the next fourteen years and to 17,000 between 1914 and 1928. Woolworth, founded in 1879, had less than 60 stores in 1900 doing an annual gross business of about \$1,000,000. In 1914 this chain had increased to 737 stores doing over \$69,000,000. And by 1927 Woolworth had grown to 1589 stores doing an annual business of nearly \$273,000,000.

Many of the giant chain enterprises of the present day had not been thought of in 1900. The United Cigar Stores Chain, for example, was organized in 1901; J. C. Penney in 1902; while Piggly Wiggly trailed far behind in 1916. In fact the total number of chain stores in 1900 was probably between 300 and 400 — whereas today there are well over 100,000 individual chain units.

#### *The Revolution in Selling Methods*

But in 1900 there was already a significant sky writing faintly discernible on the mercantile clouds. The sellers' market had almost reached its zenith. There were rumblings and grumbings among the tall factory stacks.

In Syracuse a young man named Whelan was giving our old friend Sitting Bull the first push that was to send him out of the picture. Whelan not only developed an entirely new type of cigar store, but also set up standards that were destined to shape all retailing methods and many manufacturing policies. For example, the principle of choosing sites for retail stores on the basis of known value, such as the number of persons passing a given location, throughout the day or at various hours; also the principle of studying the motions of retail clerks serving

customers, so as to save time and effort and increase the salesman's productive capacity.

Meanwhile the chains come clanking into our immediate times, arousing the independent storekeeper, the wholesaler and the manufacturer as they have never been aroused before. Bills tending to curb the chains fly around state and national legislative halls.

#### *The Mail Order Business*

Mail order selling, which made its appearance in 1872 when A. Montgomery Ward and George R. Thorn established the first mail-order house, has become a tremendously important factor in our business structure today. Sears, Roebuck & Company followed Montgomery Ward in 1893. And these two concerns have continued to control a majority of the business done by mail-order houses selling direct to the consumer.

The changes that have occurred in this department of business, and that are still occurring, illustrate the amazing evolution of methods in the last fifty years. Montgomery Ward's first catalogue was a single sheet 8 by 12 inches with no illustrations. Today they distribute ten million at a cost of a dollar each.

We now have the interesting spectacle of Montgomery Ward and Sears, Roebuck branching out into the chain store field; giving us mail-order department stores, combining the features of a centrally owned and operated chain of stores with the gigantic volume of the original mail-order business.

#### *The Independents and the Chains*

Independent retailers today endeavor to meet chain competition by establishing co-operative buying organizations of their own, in order to secure quantity buying advantages. Years ago manufacturers began organizing their own chains of retail outlets, in order to control to some extent the market for their goods. We now have not only food, drug and cigar chains, but department store chains, clothing and shoe chains, sporting goods chains, chain beauty shops, music and radio chains, chains of gasoline filling stations, auto supply stores and others too many to mention.

We live in a constant breeze of speculation, discussion, argument, rumor. Are the chains going to usurp the functions of the manufacturer?

What will happen to our economic structure with chain organizations now selling over six billion dollars' worth of goods annually to the American people? — *Extracts see 7, page 224.*

## Steps Taken by the Federal Government

### Action by Congress, the Department of Justice and the Federal Trade Commission in Dealing With the Chain Store Question

1890—Congress passed the Sherman Anti-Trust Act designed to control large concerns of all types whose trade practices had become or were destined to become monopolistic to the extent of operating against the public interest.

1911—The Supreme Court of the United States in the case of *Dr. Miles Medical Co. v. John D. Park and Sons Co.* held that price maintenance contracts were in restraint of trade and unlawful and in violation of the Sherman Anti-trust law. The opinion of the court was delivered by Mr. Justice Charles Evans Hughes. A dissenting opinion was delivered by Mr. Justice Oliver Wendell Holmes. (See page 203 this issue.)

1914—Congress passed the Clayton Act, supplementing the Sherman Anti-Trust Act.

1914—Congress passed an Act creating the Federal Trade Commission. (See page 199 this issue.)

1913—Representative Stevens, Ohio, R., introduced in the House a bill for the control of resale prices. For several years thereafter various bills on this subject were introduced and referred to the House Committee on Interstate and Foreign Commerce but did not receive serious consideration by the committee.

1920—On February 27 what is known as the Packers' Consent Decree was entered in the Supreme Court of the District of Columbia. This decree was the outcome of a suit brought by the Government through the U. S. Department of Justice against Swift & Co., Morris & Co., Wilson & Co., The Cudahy Co. and others. It enjoins the major packers from engaging in the business of handling any food products except meat and meat products, and from establishing retail meat markets; and prohibits their owning stock or other interests in public stockyards, market companies, or stockyard railroads. On the day the petition was filed counsel for the packing companies filed an assent to the provisions of the Government petition and the decree was entered.

The Supreme Court of the United States has on several occasions sustained the decree.

1926—On April 22 and 23 the House Committee on Interstate and Foreign Commerce held hearings on H. R. 11, a bill for the control of resale prices introduced in December, 1925, by Representative Clyde Kelly, Penna. R. The Kelly bill superseded various other bills having the same objective but differing in their methods of approach. No action was taken by the committee.

1927—On December 12 the Federal Trade Commission, in a report to Congress, on its independent investigation of resale prices, stated that, owing to decisions of the Supreme Court of the United States on the provisions of the anti-trust laws, further legislation would be necessary to accomplish control of resale prices.

1928—On April 30 a subcommittee of the Committee on Interstate and Foreign Commerce, appointed to consider the Kelly bill, reported the bill with amendments. Representative Clarence F. Lea, Calif. R., disagreed with the majority of the subcommittee and filed a minority report.

1928—On May 5 Congress passed a resolution introduced by Senator Smith W. Brookhart, Iowa, R., directing the Federal Trade Commission to make an investigation of the chain store systems.

1929—On January 30 the Federal Trade Commission sent to Congress the first volume of its report on its independent investigation of resale prices.

1929—The Kelly bill was reintroduced in the Seventy-first Congress, retaining its original number, H. R. 11.

Senator Arthur Capper, Kans. R., on April 18, introduced in the Senate S. 240, a bill similar to the Kelly bill, which was referred to the Senate Committee on Interstate Commerce. The Committee took no action.

The practical identity of the Capper and Kelly bills has caused them to be generally called the Capper-Kelley Fair Trade Bill.

1929—On June 4 Senator Millard F. Tydings, Md., D., introduced S. 1384 authorizing an investigation of the chain stores by the Federal Trade Commission. This bill had been introduced in 1928 but, on account of the passage of the Brookhart resolution, had not passed. Senator Tydings reintroduced it along with other bills of his on which there had been no action, but did not press for its consideration.

1929—In August, Swift & Co. and Armour & Co. filed a petition in the Supreme Court of the District of Columbia for such modification of the decree as would permit them to establish retail meat markets, handle allied food lines, and own stock in public stockyards and dockyard terminal railroads (removal of all restrictions in handling of food products, whether wholesale or retail).

1930—On January 17, the Government's answer was filed by the Attorney General, calling on the defendants for strict proof of their allegations.

In a letter of February 5, 1930, the Attorney General, in response to S. Res. 275, stated, among other things, that because of extension of time granted by the court, the defendants have not yet been guilty of disobedience to the terms of the decree, and that at the present time the time of the defendants to comply is being temporarily suspended by court order, pending the determination by the court of the question of whether the decree should be modified.

1930—On January 27 the House Committee on Inter-

state and Foreign Commerce reported the Kelly bill (H. R. 11) with changes acceptable to Mr. Kelly. When Congress adjourned on July 3 the Kelly bill was on the calendar awaiting consideration.

1930—On February 20 Representative Jones, Tex., D., introduced in the House H. R. 10122, providing that owners or operators of more than one store in any state shall be subject to state laws whether they are engaged in interstate commerce or not. This bill was referred to the House Committee on the Judiciary but the committee has taken no action.

1930—On April 2 the Armour Co. and the Swift Co. filed an amended petition in the Supreme Court of the District of Columbia.

1930—On May 12 the Federal Trade Commission sent to the Senate an interim report on the progress of its chain store investigations under provisions of the Brookhart Resolution.

1930—On May 21 and 22 the House Committee on Rules held hearings on a request of the Committee on Interstate and Foreign Commerce for a rule for the consideration of H. R. 11. The Rules Committee denied the request and left the bill in its regular place on the calendar.

1930—May 26 the Senate passed S. Res. 275, introduced by Senator H. L. Black, Ala., D., calling on the Attorney General of the United States to inform the Senate on the position of the Department of Justice in regard to the packers' petition for modification of the consent decree.

1930—On June 2 the Supreme Court of the District of Columbia heard arguments by counsel for the National Wholesale Grocers' Association and the American Wholesale Grocers' Association on their motion to dismiss the petition of the packers for modification of the Consent

Decree on the ground that the decree being final, the court was without jurisdiction to grant such modification.

1930—On June 25 Assistant Attorney General O'Brien stated in a letter to the Secretary of the Senate that the attitude of the Department toward the present status of the decree would be stated in a full report as soon as the motion which was then pending before Judge Bailey of the Supreme Court of the District of Columbia, by the Wholesale Grocers' Association to dismiss the petition, which was argued on June 2 before Judge Bailey, had been decided.

1930—On June 26 Judge Bailey overruled petitions filed by the grocers' associations. The Attorney General then responded to S. Res. 275, on July 11, giving the present status of the case, and stating that he had filed answers to the petitions denying their allegations and challenging the defendants to the strict proof thereof. To the question whether this decree should or should not be modified, the Attorney General responded that it has been the uniform practice to refrain from expressing opinions on legal questions pending for decision in the courts, and that such an expression on the matter at this time would be inappropriate.

1930—On August 15 the Federal Trade Commission issued the latest of a number of public statements of the progress of the chain store investigation in which it was announced that the force had been increased and that progress was being made.

1930—On October 7 argument of the case by the packers' attorneys and by attorneys for the Department of Justice will be heard in the Supreme Court of the District of Columbia.

## State Taxation of Chain Stores

*Without attempting to cover chain store legislation passed or pending in the several states, we present herewith a few recent state laws taxing chain stores to serve as samples of the type of measures considered by various state legislatures.—Editor's Note.*



HE State of Maryland, by 1927 ch. 554, forbade more than five chain stores in Alleghany County and levied a \$500 tax on each chain store. The operation of the law was suspended by an act of a local court.

In addition to Maryland, four States, Georgia, Indiana, North Carolina and South Carolina, have levied direct taxes on chain stores. The laws of Indiana and South Carolina have been held unconstitutional. The 1927 laws of Georgia and North Carolina were held unconstitutional but enactments of 1929 have been upheld.

Note is made of two States taxing chains indirectly. The 1930 legislature of Kentucky adopted a measure which is commented on by the National Income Tax Magazine, April, 1930, page 146, as follows: "The campaign against 'absentee-ownership' \*\*\* has resulted in the enactment of \*\*\* a tax of one-twentieth of 1 per cent on gross sales of \$400,000 or less, with the rate increasing to a full 1 per cent on total sales of \$1,000,000. The new law groups the sales of individual units of a chain for purpose of levying the tax." Virginia, Laws

1928 ch. 45, §188 and ch. 318, places a tax on distributing houses. Previously, each store was subject to a license tax as was any store. So far as its stores are concerned, chains will pay no other or different license tax than before; but if it keeps a distributing house within the State, it must pay the additional tax.

The following is a summary of the special taxes on chains levied by Georgia, Indiana, North Carolina and South Carolina:

*Georgia.*—Laws 1927, page 89, levies a tax of \$250 per store on chains of over five stores. On September 4, 1929, the superior court of Fulton County, in the case of F. W. Woolworth Co. v. Vandiver, made permanent an order restraining the administration of the 1927 law. (See the Corporation Tax Service, Georgia digest, page 58N.) In 1929, page 71, a new tax was levied which reads as follows: "Under the police powers of this State, the business of conducting chain stores and/or a chain of stores, for the selling of any kind of merchandise, hereby is classified as a business tending to foster monop-

*Continued on page 224*



## Senate Directs Federal Trade Commission To Investigate Chain Stores

Text of S. Res. 224 (Seventieth Congress, First Session) introduced by Senator Smith W. Brookhart, Iowa, R., and passed by the Senate on May 5, 1928, directing the Federal Trade Commission to undertake an inquiry into the methods of chain store marketing and distribution.



HEREAS it is estimated that from 1921 to 1927 the retail sales of all chain stores have increased from approximately 4 per centum to 16 per centum of all retail sales; and

Whereas there are estimated to be less than four thousand chain-store systems with over one hundred thousand stores; and

Whereas many of these chains operate from one hundred to several thousand stores; and

Whereas there have been numerous consolidations of chain stores throughout the history of the movement, and particularly in the last few years; and

Whereas these chain stores now control a substantial proportion of the distribution of certain commodities in certain cities, are rapidly increasing this proportion of control in these and other cities, and are beginning to extend this system of merchandising into country districts as well; and

Whereas the continuance of the growth of chain-store distribution and the consolidation of such chain stores may result in the development of monopolistic organizations in certain lines of retail distribution; and

Whereas many of these concerns, though engaged in interstate commerce in buying, may not be engaged in interstate commerce in selling; and

Whereas in consequence, the extent to which such consolidations are now, or should be made, amenable to the jurisdiction of the Federal antitrust laws is a matter of serious concern to the public; Now, therefore, be it

Resolved that the Federal Trade Commission is hereby directed to undertake an inquiry into the chain-store system of marketing and distribution as conducted by manufacturing, wholesaling, retailing, or other types of chain stores and to ascertain and report to the Senate:

(1) The extent to which such consolidations have been effected in violation of the antitrust laws, if at all;

(2) The extent to which consolidations or combinations of such organizations are susceptible to regulation under the Federal Trade Commission Act or the antitrust laws, if at all; and

(3) What legislation, if any, should be enacted for the purpose of regulating and controlling chain-store distribution.

And for the information of the Senate in connection with the aforesaid subdivisions (1), (2), and (3) of this resolution the commission is directed to inquire into and report in full to the Senate:

(a) The extent to which the chain-store movement has tended to create a monopoly or concentration of control in the distribution of any commodity either locally or nationally;

(b) Evidences indicating the existence of unfair methods of competition in commerce or of agreements, conspiracies, or combinations in restraint of trade involving chain-store distribution;

(c) The advantages or disadvantages of chain-store distribution in comparison with those of other types of distribution as shown by prices, costs, profits, and margins, quality of goods and services rendered by chain stores and other distributors or resulting from integration, managerial efficiency, low overhead, or other similar causes;

(d) How far the rapid increase in the chain-store system of distribution is based upon actual savings in costs of management and operation and how far upon quantity prices available only to chain-store distributors or any class of them;

(e) Whether or not such quantity prices constitute a violation of either the Federal Trade Commission Act, the Clayton Act, or any other statute and

(f) What legislation, if any, should be enacted with reference to such quantity prices.

## The Present Membership of the Federal Trade Commission



THE Federal Trade Commission is an independent agency, with five members, appointed for a term of seven years each by the President, by and with the consent of the Senate. No more than three members of the Commission may be members of the same political party. The chairmanship of the commission rotates annually, the change taking place on January 1 of each year, and is therefore not dependent upon party politics.

Following is the present membership of the Federal Trade Commission:

Garland S. Ferguson, North Carolina, Democrat, *Chairman*  
C. W. Hunt, Iowa, Republican  
William E. Humphrey, Washington, Republican  
Charles H. March, Minnesota, Republican  
Edgar A. McCulloch, Arkansas, Democrat



## The Powers and Functions of the Federal Trade Commission



THE Federal Trade Commission was created by an act of Congress approved September 26, 1914, in which the commission's powers and duties were defined. The commission is an independent agency, with its five members appointed for a term of seven years each by the President of the United States with the approval of the Senate. No more than three members may be of one political party.

Further powers are conferred upon this commission by "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914 (Clayton Act), and by "An act to promote export trade, and for other purposes," approved April 10, 1918, known as the export trade act (Webb-Pomerene law).

### *Functions and Procedure Under the Federal Trade Commission Act*

Section 5 of the Federal Trade Commission act declares that "unfair methods of competition in commerce are hereby declared unlawful" and empowers and directs the commission to prevent "persons, partnerships, or corporations, except banks, and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce."

Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect. Provision is made for hearings and the taking of testimony. If the commission shall then be of the opinion that the method of competition in question is prohibited by this act, it shall issue and caused to be served upon the person or organization against whom complaint is made an order to cease and desist from using such unfair method of competition as shown to be sustained by the proof submitted.

### *Economic Investigations*

Under Section 6, the Federal Trade Commission derives its authority for making economic investigations. It is provided that the commission shall have power to gather and compile information concerning, and to investigate from time to time the organization, business conduct, practices, and management of any corporation engaged in

commerce, excepting banks, and common carriers subject to the act to regulate commerce; and that it may require reports and answers to specific questions in the compilation of such information.

Under the Federal Trade Commission act the powers and duties of the commission are both legal and economic. These powers include measures for the prevention of unfair competition and violation of the Clayton law. Investigatory powers include economic studies of domestic industry and interstate and foreign commerce. Such economic inquiries may be inaugurated by the commission of its own initiative, but are more frequently undertaken by direction of the President or the Senate or the House of Representatives.

### *Powers Under the Clayton Anti-Trust Act*

The commission is given jurisdiction over violations of sections 2, 3, 7, and 8 of the Clayton Act, which prohibit:

(1) Certain discriminations in prices between different purchasers of commodities where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(2) In certain cases, so-called "tying contracts," or contracts whereby, as a condition of sale or lease, the seller or lessor exacts from the purchaser or lessee an agreement that he shall not use or deal in the goods of other commodities of a competitor of the lessor or seller, where the effect of such agreement may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

(3) In certain cases so-called "holding companies," or the ownership by one company of the stock of another, where the effect may be to substantially lessen competition between the companies, to restrain commerce, or tend to create a monopoly.

(4) So-called "interlocking directorates" in cases where one person shall at the same time be a director in any two or more corporations engaged in interstate or foreign commerce, other than banks, banking associations, trust companies, and common carriers subject to the act to regulate commerce, if such corporations are or have been competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws.

Procedure under the Clayton Act is, with some exceptions, identical with that under the Federal Trade Commission act.



## Progress of Chain Store Investigation

### Steps Taken by Federal Trade Commission To Carry Out Provisions of Senate Resolution



ON May 5, 1928 the United States Senate, by Resolution 224 (70th Congress, 1st Session) directed the Federal Trade Commission to undertake an inquiry into the chain store system of marketing and distribution.

Owing to the pressure of work, particularly on the power and gas inquiry, and the comparatively small staff of the Commission, it was impossible to assign more than a half dozen people to chain stores for some months; and it was not until the early part of 1929 that any appreciable work could be done aside from the necessary planning and preliminary preparations.

The wording of the Senate resolution called for a comprehensive inquiry into the comparative merits of chain and individual dealer distribution, and obviously involved an enormous amount of work to obtain the comparative information asked for.

#### *Four Sets of Schedules Sent Out*

The largest single piece of work on the inquiry is that connected with schedule returns. This involves the preparation of schedules for different types of distributors, the preparation of mailing lists of such distributors, the addressing and mailing out of the schedules, the preparation and mailing of the necessary follow-up letters, and finally the tabulation and analysis of the data procured.

In all, four sets of schedules were prepared and mailed. The largest is the chain-store schedule consisting of some 36 pages. This schedule covers the character of the business done by the particular chain, service features, if any, quantity and other discounts received, organization and management, consolidation and combination, private brands, leaders, price policies, advertising, etc., together with the financial and operating results for a series of years.

Similar though somewhat less comprehensive, schedules were mailed to individual wholesalers, and retailers and to the so-called cooperative or voluntary groups.

Altogether, a total of over one hundred thousand of these schedules were sent out. Their preparation and that of the necessary mailing lists engaged practically the full attention of the few people assigned to the Chain Store Inquiry up to the early part of 1929.

#### *Method of Studying Independent Retailers*

On account of the huge number of independent retailers (it has been estimated that there are some 556,000 retail provision and food establishments in the United States, to say nothing of the thousands of retailers in other lines) it was decided to study these organizations on a sample basis instead of attempting to procure returns from all of them.

#### *Follow-up Work on Inquiries*

The preparation of the schedules involved conferences

with various chain stores, wholesale and retail associations, and others. After a tentative schedule had been prepared, a summary of it was taken up with representative wholesalers, retailers and chain stores, and officers of associations of these merchants, for criticism and discussion. The schedules were revised in accordance with the suggestions received.

In procuring returns to extensive schedules such as those employed in this inquiry, the follow-up work involved is often several times greater than that required for the preparation and mailing of the schedules in question. In order to procure anything like an adequate response to schedules, it has been necessary to use repeated follow-up letters.

In addition to this routine follow up of schedules, thousands of dictated follow-up letters have been necessary, explaining the schedules or questions contained in them, urging the cooperation of unwilling companies, answering various inquiries, responding to requests for duplicate schedules, and the like.

#### *Reaching the Wholesalers*

To illustrate the difficulty encountered in this work, some 600 wholesalers returned the wholesale schedule unanswered with statements to the effect that the schedule had been sent to them by mistake as they were wholesalers and not chain stores. This necessitated remailing these schedules and calling attention to the fact that the schedule was intended for wholesalers, and that it was plainly labeled as such.

#### *Studies of Price Comparisons*

Aside from the schedule work, the largest single division of the Chain Store Inquiry is the comparative study of chain and independent prices. Careful study and consideration of the problem shortly after the passage of the Senate resolution, led to the conclusion that the comparison of chain and independent prices could be most satisfactorily made on three types of commodities, i. e., groceries, drugs, and tobacco. The establishments handling these three lines probably carry the largest proportion of items of identified merchandise sold by both independent and chain stores and are hence, susceptible of pricing with the least reference to such troublesome questions as the comparative grade and quality of merchandise sold in chain and independent stores. This should not, however, be interpreted to mean that no analysis will be made of unidentified merchandise either in these or other types of establishments.

#### *City Surveys Began with Washington, D. C.*

While the general plans for the price study were made in the early stages of the inquiry and a general scheme of procedure adopted, the staff did not reach a size suf-

ficient to undertake this work until about July 1, 1929. At this time a preliminary survey of grocery, drug and tobacco stores in the city of Washington was immediately begun preparatory to the actual work of pricing. The selection of Washington was based upon the fact that it could be priced without the expenditure of money for travel and per diem, and the practicability of its use as a laboratory for developing and perfecting improvements in this type of survey as conducted in other cities. Easily the most time-consuming part of this work was preparation of the lists of items to be priced. A scientific analysis of chain and independent prices requires not only the selection of commodities handled by both chain and independent stores, but also a list which may be regarded as representative of the goods handled by grocery, drug and tobacco stores, respectively.

#### Items Covered in the Washington Survey

The lists for Washington, as finally made up, covered approximately 450 grocery items, 460 drug items, and 125 tobacco items. Pricing work on these items began in Washington on August 5 and was completed on September 20, 1929. The work covered all the chain stores operating in Washington, approximately 572 independent grocery stores, 185 drug stores, 145 tobacco retailers and several wholesale houses.

#### Cincinnati and Des Moines

Following the completion of the price work in Washington, a survey of Cincinnati was undertaken. After the necessary preliminary study, pricing work at that city began on September 23 and was substantially completed by November 4, 1929. Early in March plans were made for continuing the work in an agricultural section, and after considerable study Des Moines, Iowa, was selected and preliminary work begun there.

#### Increase of Personnel Speeds Work

By August 15, 1930, additions to the staff of investigators at work on the chain store inquiry brought the total number employed to practically double the number originally available. The result is that tasks upon which little had previously been accomplished, because of the shortage of personnel, are now being undertaken. Among new activities are the following:

Review of income statements and balance sheets contained in financial reports of chain stores together with the necessary follow-up of incomplete and inconsistent figures.

Intensive follow-up of the chain stores with a view to procuring an adequate number of reports.

Following-up of several thousand chain store, cooperative chain, wholesale, and independent retail schedules for supplementary general information and the correction of obviously erroneous figures.

Most of the foregoing work is well under way. When this is completed, it will be possible to begin tabulation and analysis of the huge amount of material gathered.

#### Commodities Covered by the Investigation

In response to the intensive follow-up of chain stores 603 additional chain store schedules representing 8,693 stores were returned in June and July. This brings the total number of chain store systems reporting as of August 1, 1930, to 1,663 and increases the total number of stores reported for to 65,367.

The number of chains represented in the foregoing figures together with the number of stores by commodity groups, is as follows:

|                                      | Chain<br>Systems | Number of<br>Stores |
|--------------------------------------|------------------|---------------------|
| Groceries .....                      | 371              | 42,751              |
| Shoes .....                          | 219              | 5,242               |
| Drugs .....                          | 171              | 1,904               |
| Department, General and Dry Goods.   | 223              | 2,914               |
| Clothing .....                       | 410              | 3,689               |
| Variety .....                        | 110              | 4,035               |
| Furniture and Musical Instruments... | 42               | 277                 |
| Confectionery and Candy .....        | 38               | 677                 |
| Tobacco .....                        | 23               | 3,394               |
| Hardware, Lumber and Implements..    | 56               | 484                 |
|                                      | 1,663            | 65,367              |

The Commission's study of prices in various cities is also going forward steadily. The work of obtaining prices at Des Moines has been finished and a number of examiners are continuously employed on the office tabulation and analysis of these prices.—*Extracts, see 18, p. 224.*

## Federal Laws Concerning Price Maintenance



HE general Federal law upon the manufacturer's resale price practice is defined in the cases arising under the Sherman Anti-trust Act and the supplemental Federal Trade Commission act, adjudged by the Supreme Court of the United States.

As the law now stands a manufacturer acting alone in the course of a private business free from unlawful monopoly.

May at least (1) suggest a resale price for his product, publish it for the information and guidance of the purchasing public and state it upon the product; (2) explain to purchasers the fairness of such price and the value derived from using it and appeal to them to use it for that reason; (3) declare that he will refuse sales to all who either do not use such price or sell to those who

do not use it; (4) ascertain himself or through his agents acting independently of others, the names of those who do not do so (we do not interpret the Beech-Nut or any subsequent case to prohibit this and we do not think this can be prohibited by law); (5) list them, and (6) refuse sales to them.

But he may not (1) sell subject to the condition or an agreement (express or implied) effective to require purchasers to maintain the resale price named by him; (2) exact from them a promise or assurance or their word of honor that they will maintain such price, or list those who do not do so; (3) instruct his salesmen to secure from price-maintaining dealers the names of price cutters, or request such dealers to report the names of price cutters, or report to such dealers the names of price cutters, or list those so reported.—*Extracts, see 16, p. 224.*



## Anti-Chain Store Legislation in Congress

### I. The Kelly Fair Trade Bill

H. R. 11, introduced by Representative Clyde Kelly, Pa., R., was reported from the House Committee on January 27, 1936, and was placed on the House Calendar, listed as Calendar No. 99. The primary object of the bill is to enable manufacturers of trade marked articles to fix the retail price at which their products shall be sold. Supporters of the bill maintain that its passage will check price cutting by chain stores and prevent destructive competition. A similar bill introduced by Senator Arthur Capper, Kans., R., is before the Senate Committee on Commerce. The full text of the Kelly bill follows:

H. R. 11, a bill to protect trade-mark owners, distributors, and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguishing trade-mark, brand, or name.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

That no contract relating to the sale of a commodity which bears (or the label or container of which bears) the trade-mark, brand, or trade name of the producer of such commodity, and which is in fair and open competition with commodities of the same general class produced by others, shall be deemed to be unlawful, as against the public policy of the United States, or in restraint of interstate or foreign commerce, or in violation of any statute of the United States, by reason of any agreement contained in such contract—

That the vendee will not resell such commodity except at the price stipulated by the vendor.

Sec. 2. Any such agreement in a contract in respect to interstate or foreign commerce in any such commodity shall be deemed to contain the implied condition—

(a) That during the life of such agreement all purchasers from the vendor for resale at retail in the same

city or town where the vendee is to resell the commodity shall be granted equal terms as to purchase and resale prices;

(b) That such commodity may be resold without reference to such agreement—

(1) In closing out the owner's stock for the purpose of discontinuing dealing in such commodity or of disposing, toward the end of a season, of a surplus stock of goods specially adapted to the season;

(2) With notice to the public that such commodity is damaged or deteriorated in quality, if such is the case; or

(3) By a receiver, trustee, or other officer acting under the orders of any court, or any assignee for the benefit of creditors.

Sec. 3. Nothing contained in this act shall be construed as legalizing any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices.

Sec. 4. As used in this act —

(1) The term "producer" means grower, packer, maker, manufacturer, or publisher.

(2) The term "commodity" means any subject of commerce.

### II. The Jones Anti-Monopoly Bill

H. R. 10122, introduced by Representative Marvin Jones, Tex., D., is designed to so amend the existing laws as to make chain stores amenable to the anti-monopoly laws of any states in which they operate regardless of whether they are engaged in interstate Commerce. This bill is before the House Committee on the Judiciary.

H. R. 10122, a bill to permit the regulation of monopolies, trusts, chain stores, combinations, and holding companies.

*Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,*

That Chapter 1 of title 15 of the Code of Laws of the United States be amended by adding the following new sections:

Sec. 33. Hereafter any person, firm or corporation which owns, controls or operates, or attempts to own, control, or operate any store or stores or other business institution in more than one State shall, in such owning, operating or controlling any store, stores or other business institution in any State, or in attempting to do so, be subject to all of the laws and supervising authority of such State; and the fact that such person, firm, or corporation may be engaged in interstate commerce shall not exempt such persons, firm, or corporation from complying with the laws and regulations of any State in which

any such business institution is owned, controlled, or operated.

"Sec. 34. All holding companies, chain stores, or chain institutions owning, operating, or controlling wholesale or retail stores or other business institutions in more than one State shall in so far as they own, operate, or control any such store or other business institution in any State be subject to all antimonopoly or antimerger laws or other laws of such State. Any such State shall have authority to regulate, control, or forbid such ownership or operation in such State except in compliance with the laws of such State.

"Sec. 35. The provision of this Act shall be cumulative and shall not be construed as in any way repealing or modifying any of the laws of the United States in respect to monopolies, mergers, trusts, conspiracies, or laws forbidding any unfair trade practices. This Act, however, shall not apply to bona fide cooperative organizations of farmers, nor affect the exemption provided for such organizations under existing laws."



# U. S. Supreme Court Says Price Fixing Illegal

## The Opinion Versus the Dissent in Famous Decision

The decision of the Supreme Court of the United States in the case of the *Dr. Miles Medical Co. v. John D. Park and Sons Co.*, handed down on April 3, 1911, was to the effect that price fixing is illegal under the provisions of the Federal Anti-Trust laws. This led those who believe that price fixing of trade marked goods would prevent monopolies to seek the passage of new legislation making price fixing legal. The principle laid down in the dissenting opinion of Mr. Justice Holmes in the *Miles-Park* case is the genesis of the Kelly Fair Trade Bill now pending in the House.—*Editor's Note.*

The complainant, a manufacturer of proprietary medicines which are prepared in accordance with secret formulas, presents by its bill a system, carefully devised, by which it seeks to maintain certain prices fixed by it for all the sales of its products, both at wholesale and retail. Its purpose is to establish minimum prices at which sales shall be made by its vendees and by all subsequent purchasers who traffic in its remedies. Its plan is thus to govern directly the entire trade in the medicines it manufactures, embracing interstate commerce as well as commerce within the state respectively. To accomplish this result it has adopted two forms of restrictive agreements limiting trade in the articles to those who become parties to one or the other. The one sort of contract, known as "Consignment Contract,—Wholesale," has been made with over four hundred jobbers and whole-

sale dealers, and the other, described as "Retail Agency Contract," with twenty-five thousand retail dealers in the United States.

The defendant is a wholesale drug concern which has refused to enter into the required contract, and is charged with procuring medicines for sale at "cut prices" by inducing those who have made the contracts to violate the restrictions. The complainant invokes the established doctrine that an actionable wrong is committed by one who maliciously interferes with a contract between two parties, and induces one of them to break that contract, to the injury of the other, and that, in the absence of an adequate remedy at law, equitable relief will be granted.

The principal question is as to the validity of the restrictive agreements.—*Extracts from statement of case by Mr. Justice Hughes.*

### THE OPINION

Mr. Justice Hughes

**P**RELIMINARILY these are opposing contentions as to the construction of the agreements, or at least, of that made with jobbers and wholesale dealers. The complainant insists that the "consignment contract" contemplates a true consignment for sale for account of the complainant, and that those who make sales under it are the complainant's agents, and not its vendees. The court below did not so construe the agreement, and considered it an effort "to disguise the wholesale dealers in the mask of agency, upon the theory that in that character one link in the system for the suppression of the cut-rate business might be regarded as valid" and that under this agreement "the jobber must be regarded as the general owner, and engaged in selling for himself, and not as a mere agent of another." (90 C. C. A. 581, 164 Fed P. 805.)

There are certain allegations in the bill which do not accord with the complainant's argument. Thus, it is alleged that it "has been and is the uniform custom" of the complainant "to sell said medicines, remedies, and cures to jobbers and wholesale druggists, who in turn sell and dispose of the same to retail druggists for sale and distribution to the ultimate purchaser or consumer." And in setting forth the form of agreement in question it is alleged that it was "required to be executed by all jobbers and wholesale druggists to whom your orator sold its aforesaid remedies, medicines, and cures." It is further stated that, as a means of maintaining "said list of prices," cards bearing serial identifying numbers are placed in each package of remedies "sold to jobbers and

### THE DISSENT

Mr. Justice Holmes

**T**HIS is a bill to restrain the defendant from inducing, by corruption and fraud, agents of the plaintiff and purchasers from it to break their contracts not to sell its goods below a certain price. There are two contracts concerned. The first is that of the jobber or wholesale agent to whom the plaintiff consigns its goods; and I will say a few words about that, although it is not this branch of the case that induces me to speak. That they are agents, and not buyers, I understand to be conceded, and I do not see how it can be denied. We have nothing before us but the form and the alleged effect of the written instrument, and they both are express that the title to the goods is to remain in the plaintiff until actual sale as permitted by the contract. So far as this contract limits the authority of the agents as agents, I do not understand its validity to be disputed. But it is construed also to permit the purchase of medicine by consignees from other consignees, and to make the specification of prices applicable to goods so purchased as well as to goods consigned. Hence, when the bill alleges that the defendant has obtained medicine from these agents by inducing them to break their contracts, the allegation does not require proof of breach of trust by an agent, but would be satisfied by proving a breach of promise in respect of goods that the consignee had bought and owned. This reasoning would have been conclusive in the days of Saunders if the construction of the contract is right, as I suppose that it is. But the contract as to goods purchased is at least in the background and obscure; it is not the main

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## THE OPINION—Continued

Mr. Justice Hughes

wholesale druggists." But it is also alleged in the bill that under the provisions of the contract the title to the medicines remained in the complainant "Until actual sale in good faith to retail dealers, as therein provided."

Turning to the agreement itself, we find that it purports to appoint the party with whom it is made one of the complainant's "wholesale distributing agents," and it is agreed that the complainant, as proprietor, shall consign to the agent "for sale for the account of said proprietor" such goods as it may deem necessary, "the title thereto to remain in the proprietor absolutely until sold under and in accordance with the provisions hereof, and all unsold goods to be immediately returned to said proprietor on demand and the cancellation of this agreement." The goods are to be invoiced to the consignee at stated prices, which are the same as the minimum prices at which the consignee is allowed to sell. It is also agreed that the consignee shall "faithfully and promptly account and pay to the proprietor the proceeds of all sales, after deducting as full compensation . . . a commission of 10 per cent of the invoice value and a further commission of 5 per cent on the net amount of each consignment after deducting the said 10 per cent commission on all advances on account remitted within ten days from the date of any consignment," such advances, however, not to affect the title to the goods, and to be repaid should the agreement be terminated and unsold goods, on which advances had been made, be returned. The consignee guarantees payment for all goods sold, and promises "to render a full account and remit the net proceeds on the first day of each month or for the sales of the month preceding."

The consignee agrees "to sell only to the designated retail agents of said proprietor, as specified in lists of such retail agents furnished by said proprietor, and alterable at the will of said proprietor." A further provision permits sales "only to the said retail or wholesale agents of said proprietor, as per list furnished." No time is fixed for the duration of the agreement.

The bill asserts complainant's "right to maintain and preserve the aforesaid system and method of contracts and sales adopted and established by it." It is, as we have seen, a system of interlocking restrictions by which the complainant seeks to control not merely the prices at which its agents may sell its products, but the prices for all sales by all dealers at wholesale or retail, whether purchasers or subpurchasers, and thus to fix the amount which the consumer shall pay, eliminating all competition. The essential features of such a system are thus described by Mr. Justice Lurton (then circuit judge), in the opinion of the circuit court of appeals in the case of *John D. Park & Sons Co. v. Hartman* (12 L. R. A. (N. S.), on page 147, 82 C. C. A. 158, 153 Fed 24): "The contracting wholesalers or jobbers covenant that they will sell to no one who does not come with complainant's licence to buy, and that they will not sell below a minimum price dictated by complainant. Next, all competition between retailers is destroyed, for each such retailer can obtain his supply only by signing one of the uniform contracts prepared for retailers, whereby he covenants not to sell to anyone who proposes to sell again unless the buyer is authorized in writing by the complainant, and not to sell at less than a standard price named in the agreement. Thus all room for competition between retailers, who supply the public, is made impos-

Continued on page 223

## THE DISSENT—Continued

Mr. Justice Holmes

undertaking that the instrument is intended to express. I should have thought that the bill ought to be read as charging the defendant with inducing a breach of the ordinary duty of consignees as such.

The second contract is that of the retail agents, so called, being really the first purchasers, fixing the price below which they will not sell to the public. There is no attempt to attach a contract or condition to the goods, as in *Bobs-Merrill Co. v. Straus*, (210 U. S. 339, 52 L. ed. 1086, 28 Sup. Ct. Rep. 722) or in any way to restrict dealings with them after they leave the hands of the retail men. The sale to the retailers is made by the plaintiff, and the only question is whether the law forbids a purchaser to contract with his vendor that he will not sell below a certain price. This is the important question in this case. I suppose that in the case of a single object, such as a painting or a statue, the right of the artist to make such a stipulation hardly would be denied. In other words, I suppose that the reason why the contract is held bad is that it is part of a scheme embracing other similar contracts, each of which applies to a number of similar things, with the object of fixing a general market price. This reason seems to me inadequate in the case before the court. In the first place, by a slight change in the form of the contract the plaintiff can accomplish the result in a way that would be beyond successful attack. If it should make the retail dealers also agents in law as well as in name, and retain the title until the goods left their hands, I cannot conceive that even the present enthusiasm for regulating the prices to be charged by other people would deny that the owner was acting within his rights. It seems to me that this consideration by itself ought to give us pause.

But I go farther. There is no statute covering the case; there is no body of precedent that, by ineluctable logic, requires the conclusion to which the court has come. The conclusion is reached by extending a certain conception of public policy to a new sphere. On such matters we are in perilous country. I think that at least it is safe to say that the most enlightened judicial policy is to let people manage their own business in their own way, unless the ground for interference is very clear. What then, is the ground upon which we interfere in the present case? Of course, it is not the interest of the producer. No one, I judge, cares for that. It hardly can be the interest of subordinate vendors, as there seems to be no particular reason for preferring them to the originator and first vendor of the product. Perhaps it may be assumed to be the interest of the consumers and the public. On that point I confess that I am in a minority as to large issues that are concerned here. I think that we greatly exaggerate the value and importance to the public of competition in the production or distribution of an article (here it is only distribution) as fixing a fair price. What really fixes that is the competition of conflicting desires. We, none of us, can have as much as we want of all the things that we want. Therefore, we have to choose. As soon as the price of something that we want goes above the point at which we are willing to give up other things to have that, we cease to buy it and buy something else. Of course, I am speaking of things that we can get along without. There may be necessities that sooner or later must be dealt with like short rations in a shipwreck, but they are not Dr. Miles medicines. With regard to things like the latter,

Continued on page 223

## Will Kelly Price Fixing Bill Prevent Monopolies and Unfair Trade Practices?

Pro

HON. CLYDE KELLY

U. S. Representative, Pennsylvania, Republican

**I**N 1914 Congress created the Federal Trade Commission, and in that act laid down the ban against unfair competition. Now, in my estimation one of the outstanding methods of unfair competition in business is the practice of selling trademarked, identified, standard merchandise at ruinously low prices in order to broadcast the belief that all goods are sold at the same low price. Such practices deceive the public and destroy competition.

However, the Federal Trade Commission has never acted upon this method of unfair competition, presumably because the Supreme Court of the United States, in the Doctor Miles Medical Co. case of 1911, declared that price-maintenance contracts to prevent such price cutting for ulterior purposes were in violation of the Sherman anti-trust law of 1890.

The Federal Trade Commission endeavored to act in line with this Supreme Court decision and began action against various business concerns charged with attempting to maintain prices. This led to such confusion that the commission on December 12, 1927, issued the following memorandum:

"The question of resale price maintenance is one of the most troublesome with which the commission has to deal in the present state of the decision. Courts have fallen into hopeless confusion. Orders of the commission, issued under its organic act, have been upheld in some circuits and set aside in others on almost undistinguishable states of fact. It is evident that legislation will be required to cure the present unsatisfactory conditions."

In line with the suggestion that legislation is necessary to meet the present unsatisfactory situation, I have introduced H. R. 11, known as the fair trade bill.

The public pays the bill for unfair competition in one form or another. The destruction of independent retailers, wholesalers, and manufacturers by unjust practices injures the consumers, who are helpless before monopoly.

If present conditions continue we must accept the transformation of our land of opportunity into a land of hired men, with workers known as numbers, not as individuals.

In his acceptance speech at Palo Alto, Calif., in 1928, President-elect Hoover said:

"As Secretary of Commerce I have been greatly impressed by the fact that the foundation of American business is the independent business man. We must maintain his opportunity and his individual service. He and the public must be protected from unjust competition, from domination and predatory business."

That is the expression of a great purpose with which every good American must agree. We should give the independent business man a fair field but no favors. If we safeguard him from unfair competition, he will take care

Con

HON. GEORGE HUDDLESTON

U. S. Representative, Alabama, Democrat.

1. The purpose of this bill is to enable large producers to dictate to dealers the price at which an article shall be sold at retail. It is called "A bill to protect \* \* \* the public against injurious and uneconomic practices \* \* \*." It might more candidly be named "A bill to foster monopolies."

2. There is no public demand for this bill. It is merely another selfish-interest measure. It is pressed by interests seeking larger and more stable profits. The consumer's welfare is totally ignored.

3. This bill legalizes contracts which are now unlawful. To do so, it uproots an age-old principle of the common law. From time out of mind public policy has forbidden that a person selling goods should contract with the purchaser to fix the price at which same should be resold. The majority report supports its conclusion by an extract from an argument made by a member of the committee in a case in which he was an attorney. Possibly this warrants a citation of the law as pronounced by the Supreme Court in the case of Miles, etc., v. Park & Sons Co. (220 U. S. 373). The court, dealing with the identical point and supporting the opinion by numerous citations, says:

"But agreements or combinations between dealers, having for their sole purpose the destruction of competition and the fixing of prices, are injurious to the public interest and void."

Sound public policy has always forbidden, and sound public policy must always forbid, such contracts.

4. The fundamental upon which business is founded, and on which it has attained its present state of unprecedented development, is the system of open and fair competition. It is the foundation of our economic philosophy. It is the system under which American business men have become the richest class in the world. How amazing it is then, to find respectable members of that class resorting to tricks and devices, legal and otherwise, to evade competition and to thwart its rules. How amazing to find them supporting a bill aimed directly at the system to which they owe their very existence. More and more we find business unwilling to compete or resorting to competition in nonessentials only. The spread between the cost of production and the price exacted from the consumer has more than doubled in the last 15 years. Much of the competition that remains consists in advertising and other distribution methods, from which the consumer derives little or no real benefit and which, hence, is an almost total economic loss. This process can not go on indefinitely. If business men will not compete voluntarily, legal means must be found to compel them to do so. Failing this, our system is marked for downfall. If the general public can not find in competition protection from extortion, they will resort to a more drastic collectivism. There

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## Pro

HON. CLYDE KELLY—Continued

of himself. We should give him a chance to protect himself against price-cutting profiteers.

Thomas A. Edison in a few lines characteristically throws a bright light into the darkness of misunderstanding created by those who profit from unfair trade practices. The view of this eminent leader, whose record of distinguished achievement has never been approached in American history, should have great weight with all those who are interested in the public welfare. He says:

"Fair competition between manufacturers is a good thing and will inevitably result in fair prices to the public. The competition developed by the price-cutting methods of certain retailers is harmful to the manufacturer, destructive to the legitimate dealer, and of no lasting benefit to the small portion of the public temporarily affected by it. I heartily approve of the Capper-Kelly bill."

From his matchless experience in devising and marketing quality products, Mr. Edison is in a position to judge the value of fair competition. He knows at first hand the damage done to the public as well as to the makers and distributors of identified, guaranteed merchandise through the practice of selling such goods at ruinously low prices in order to delude buyers into the belief that all goods are sold at the same bargain rates.

For years the great organizations of independent business men have petitioned Congress to grant this relief from intolerable conditions. Twelve hundred associations, embracing practically all the independent agencies of production and distribution, have besought this action.

Such an attitude is natural. It is inevitable. The maker of a branded, guaranteed article, into which he has put his ability, money, and good name, is able by mass production and efficient methods to sell it to the consumer at \$1 per unit. Will he not oppose with all his power the advertising and sale of that article at 69 cents by a price cutter who uses another man's good reputation for his own ulterior purposes? So, too, the wholesaler and retailer must oppose the piratical methods of price cutters who use standard goods as bargain bait to over-price traps.

But what about the consumer? Will he profit most from standard prices on standard goods or from uncertain and fluctuating prices? That is the paramount question. Whatever else one may be, he is certainly a consumer.

The price cutter can not escape the fundamental business law that he must make a profit or go out of business. Then it follows that he must cover his loss on standard, trade-marked goods, by charging an unduly high price on unidentified goods.

Who pays these excessively high prices on unnamed goods? The same consumer who holds a penny so close to his eyes that he can not see he is being robbed of a dollar. Is an unjustly low price on one bait article to compensate for an unjustly high price on 10 blind articles? Surely the consumer will be most benefited when his dollar buys a dollar's worth of fair goods and fair play. The American consumer is naturally a fair-minded person. He is ready and willing to pay a fair price for what he buys. Naturally he does not desire to be overcharged and the price cutter's trick of reducing standard prices on well-known products has led him into believing that the standard prices are too high. Once let him understand the system which exploits and defrauds him and he will insist that the prices of identified, guaranteed merchandise, sold under competitive conditions, be put under

Continued on next page

## Con

HON. GEORGE HUDDLESTON—Continued

are three economic systems—first, competition; second, the compromise of regulation by law; and third, socialism. Which will sensible business men choose?

5. An effort is made to present the bill under the cloak as being aimed at the chain store. The effort is to capitalize the opposition to the chain-store system. In truth, the bill has no bearing whatever upon the chain-store problem.

6. The larger producers and packers support this bill. It will increase their profits and make them more secure. Numerous retailers have also been induced to support the bill, by the propaganda that it will relieve them from "price cutting" and other competition. They do not realize that they are to be the ultimate victims of the measure. More and more the retailer will become a mere "agent" and his store a mere depot through which advertising producers distribute their products. More and more he will be driven toward the position of servant for the large producer master, and the good will which he may strive to build will belong to the latter. The retailer can get no permanent benefit from this bill. To retain his independence, he must face in the opposite direction, refuse to handle advertised specialties, and assert his right to handle his goods under his own labels, upon merit and price, according to old-time competition.

The foregoing is confined to the general principles applicable to the bill. Its objectionable details, of which there are a number, are obvious.—*Extracts, see 9, p. 224.*

HON. CLARENCE F. LEA,

U. S. Representative, California, Democrat.



AM reluctant to interfere with the general right of a buyer of property to dispose of it on any terms satisfactory to himself. I concede, however, there is an injustice in the competition of a dealer who makes a practice of selling goods at or below cost of the purpose of discrediting the legitimate price of his competitor. Such price making may be made pursuant to a method that amounts to a deception of the buying public. Legislation to prevent that practice might be considered in the public interest. I feel that the public is not interested, however, in merely protecting profits or permitting an arrangement that arbitrarily fixes profits. Competition, without misrepresentation, on a close margin is not against public interest.

Therefore, I could not join in the committee report unless the protection of the contract was so limited as to confine it either to costs or a moderate percentage above the purchase price of the dealer, say, 10 or 20 per cent. Such a margin would prevent sales below cost and not be open to the criticism of fostering unreasonable profits. *Sec. 10, p. 224.*

MAJ. BENJAMIN H. NAMM,

President, Namm Store, Brooklyn, N. Y.



LONG with the great majority of retailers, I am opposed to price fixing, because it will tend to destroy competition and we still believe in the old doctrine that competition is the life of trade. Ever since this country began there has been price freedom. Goods have been bought and sold at prices that varied with the natural law of supply

Continued on next page



## Pro

HON. CLYDE KELLY—Continued

the control of the maker of goods who is most interested in the consumer's good will and who plans the production and distribution of his product.

That power of price control will mean lower prices for standard goods than the price cutters now name. Under the present system of unrestricted price cutting the manufacturer of standard goods must name his price in the sure knowledge that it will be slashed by predatory price cutters to make a spider-web bargain. But this manufacturer must protect his own independent distributors so that they can make a living profit out of the sale of his product. To do that he must make his price high enough to allow for this price cutting and still enable him to sell to his independent retailers.

That price maintenance results in lower prices is a proven fact. In all the realm of industry there is no greater example of continuously lower price and higher quality than the automobile business. It has been built entirely on price control and the manufacturers have named the uniform price to the buyer.

Year by year the prices have been reduced and values increased. The consumers have profited from every advance in standardization of production and increased efficiency in distribution.

It is true in every line. The manufacturer of an identified product dare not make the price too high, or the public will not buy. He is more concerned about low price than anyone else, for the lower the price the wider the market.

Unrestricted price cutting on standard goods eliminates competition by destroying competitors. Price maintenance increases competition between manufacturers striving to win the approval of the public.

The Capper-Kelly bill expressly provides that contracts are permissible only when the producer is in competition with other makers of goods of the same class. Its entire aim is to increase competition but to assure that it will be fair competition, not unfair.

Cut-throat competition always works injury to the public. The method is to select a certain locality and cut prices on standard, well-known goods, in order to persuade the public that the reduction is the result of competition and that all goods are sold at the same low figures. Then when the independent dealers have been bankrupted, the prices are restored to a high level.

The greatest instance of the elimination of competition in America today is found in the slaughter of the independents by great chain store organizations. Several hundred thousand retailers have been put out of business and the process is continuing more rapidly today than ever before.

Chain stores are not responsible for higher standards of merchandising. Adding a thousand stores together does not assure efficiency. The improvements as to sanitary conditions in factory and store; the advance in standardized quality and identified packages; the lower prices due to mass production; all these came regardless of chains.

The United States Department of Commerce has investigated the distribution of food products and has failed to find that chain stores eliminated a single function performed by wholesale grocers. They must not only perform the functions but must inventory their stocks more often and pay added costs for inspection and supervision. The best wholesale houses make a net profit of only 2

Continued on next page

## Con

MAJ. BENJAMIN H. NAMM—Continued

and demand. Now it is proposed to give to manufacturers the legal right to fix the price at which branded articles are to be sold by the retailer to the public.

This legislation can be justified only if it be in the interests of the consuming public. A bill to abolish competition among retailers is certainly not in the interest of the consuming public. On the contrary, it is unsound, it is uneconomical, it is unfair, and it is un-American. Outside of that it is probably all right.

Price fixing is against the interest of the consuming public because it will raise the cost of living. Practically everything that we use, we wear, we eat or drink could be brought within the terms of this bill, all to be retailed at uniform prices regardless of whether one merchant gave costly service or not regardless of whether one's overhead was 10 per cent or 30 per cent.

Just picture two typical stores in the same city or town. One caters to the classes and the other to the masses. The class store pays a high rental. It gives credit and delivers its merchandise in motor cars deluxe. The mass store pays a low rental, gives no credit, may even make no deliveries. Yet both stores operating under price fixing would have to sell at the same price fixed by the manufacturer, and fixed high enough, you may be sure, to enable those stores with high operating costs to make a profit.

This bill is unsound because it fosters monopolies by removing competition from retailing and it represents an insidious effort to nullify the Sherman Anti-Trust Act by legalizing price agreements in restraint of trade. The bill is unsound because it will rob the consumer of the protection he now receives from retailers, and it will put manufacturers in virtual control of retail distribution, since, as I have said, practically anything and everything may be branded.

Under our present system of price freedom, the retailer has always served as a sort of buyer for the public. He has acted as check and balance between the manufacturer and consumer. This bill would change the very essence of that service. It will put the manufacturer in the saddle riding high, wide, and handsome, and with no agency whatsoever to protect the interest of the consuming public, no agency to keep him from making excessive profits, and lowering the size and quality of his product without correspondingly lowering the price.

Price fixing is uneconomical because, as everyone knows, price is not a constant factor in our economic life. It is instead a very variable factor. See how commodity prices have dropped in the past six months. What assurance has the public that fixed prices would be lowered by manufacturers when the cost of labor and raw materials go off? Very little, I am afraid, but there is abundant reason to believe that fixed prices would go up with any increase in the cost of manufacture. This bill, however, would rob the retailer of any power to reflect in his prices the lowered rate on commodities in the wholesale market.

Price fixing is uneconomical because it runs counter to a basic law of economics—the old law of supply and demand. Just let us picture a retailer who in mid season is heavily stocked with branded merchandise, all at fixed prices. Along comes unseasonable weather or an epidemic of influenza or a market crash. The demand drops off, and his goods don't sell. His expenses pile up, and his notes fall due. If he acts quickly, a 20 per cent reduction

Continued on next page

## Pro

HON. CLYDE KELLY—Continued

per cent and it is doubtful if the chains perform the functions on such a margin. These great distributing organizations tend toward monopoly and in monopoly there is no incentive to improve.

It is stated that resale-price maintenance would lead to monopoly and monopoly profit.

Here, again, just the opposite is true. Unrestricted price cutting is the sure road to monopoly. Justice Louis Brandeis of the Supreme Court, when a member of the New York bar, said:

"Americans should be under no illusions as to the value or effect of price cutting. It has been the most potent weapon of monopoly—a means of killing the small rival to which the great trusts have resorted most frequently. It is so simple, so effective. Far-seeing, organized capital secures by this means the cooperation of the short-sighted unorganized consumer to his own undoing. Thoughtless or weak, he yields to the temptation of trifling, immediate gain, and, selling his birthright for a mess of pottage, becomes himself an instrument of monopoly."

No would-be monopolist ever undertook to build his sinister power by stabilizing prices. His method has been to cut prices and destroy independent competitors.

It is stated that resale price maintenance would be injurious because it would eliminate bargain sales.

As a matter of fact, it would mean real bargain sales, not fake bargain sales. Under the present price-cutting system the so-called bargain is but a bait to deceive the unwary customer. Side by side with the bargain is a substitute overpriced to the limit. A single purchase on goods the customer does not know will often wipe out all the pennies saved in a year's bargains on goods he does know.

Under resale price maintenance there will be provision for selling standard goods at less than standard prices under certain circumstances agreed upon by the manufacturer and distributor. Fair trade practices will mean that fake bargains will no longer dupe and delude the customer.

I have a firm confidence that permitting the makers of standard goods and their distributors to enter into voluntary contracts as to resale price will advance the best interests of the consumers of this country. I believe it will do this because:

First. It protects identified goods, saving the time of the buyer and assuring uniform quality.

Second. It means lower prices, fixed under competitive conditions, for securing the widest possible markets.

Third. It will hinder the process of monopolization of retail merchandizing by increasing fair competition.

Fourth. It will tend to prevent mergers of manufacturers seeking to protect themselves from predatory price cutting.

Fifth. It will stimulate better merchandizing methods by protecting efficiency and economy among independent distributors.

Sixth. It will benefit every farmer who sells his products to the manufacturers of standard food products.

Seventh. It will benefit every city dweller who desires a dollar full value for every dollar expended.

Eighth. It will assure mutual profit sales with benefits to both parties of from every transaction.

Ninth. It will encourage honest business methods, wherein lies the consumers' only sure protection.—*Extracts, see 1, p. 224.*

## Con

MAJ. BENJAMIN H. NAMM—Continued

of his entire stock may liquidate his assets and keep him going, but under this bill he won't be able to liquidate. He must maintain his prices—or what? There is only one course. He must go into the hands of a receiver. Then, and only then, may there be price reduction.

Price fixing is unfair because it discriminates. It makes possible one set of fixed prices for one community and another set for a nearby community. It is entirely possible under this bill that Manhattan would be selling branded articles at one fixed price and Newark, for instance, at a different price, according to a whim of the manufacturer.

Price-fixing legislation is un-American because it is just class legislation. It is solely in the interest of manufacturers and against the interest of the consumer. It is also against the interest of labor and the farmer, as evidenced by their expressed opposition.

Mr. William Green, president of the American Federation of Labor, has said in reference to the principle of price fixing that it is contrary to sound public policy. It is un-American also because it is paternalistic. This great country of ours has not been built up by legislation restrictions. It has been built by the ability, initiative, energy, and free competition of all of our people. Neither wholesalers nor retailers need legislative coddling.

I have no quarrel with the sale of merchandise that is branded or with that national advertising which places branded articles before the public. My only quarrel is with this proposed recourse to radical legislation to fix prices for branded articles and then to use national advertising for the purpose of keeping prices at excessive levels. No reputable retailer approves of predatory price cutting. This bill may aid in reducing that occasional evil, but it will do greater harm to the consumer, in eliminating price cutting arising from differences in cost of retailing. Such a price cutter is a help to the consumer.

Merely because an article bears an advertised name is no reason why it should sell at the same price in all stores in all cities, regardless of operating costs.

Price cutting is often a weapon of monopoly, as alleged, but dynamite, too, is used by miners and by farmers as well as by safe crackers.

The automobile business has built distribution by perfecting instalment selling and by mass production methods. The fixed price in the auto field is a delusion and a snare. Did you ever dicker with a dealer over the price you should get for your old car? There is always important price cutting in the automobile business.

In summary may I repeat, I am opposed to price fixing for the following reasons: It is against the interest of the general public and it will raise the cost of living. It will foster monopolies among manufacturers. It will change the retailer from a buyer for the public to a selling agent for the manufacturer. It will prevent the prompt reduction of retail prices to keep pace with corresponding declines in manufacturing costs. It runs counter to the basic law of supply and demand. It will abolish free and open competition among retailers. It will discriminate between close and neighboring communities. It is class legislation solely in the interest of the manufacturer and against the interest of the consuming public. It is opposed to the interest of the laborer and the farmer as evidenced by their expressed opposition, and last but not least, price fixing will tend to break down and destroy the initiative of American business.—*Extracts, see 13, p. 224.*

## Should Meat Packers be Permitted to Enter the Chain Store Field?

### Pro

HON. JOHN B. KENDRICK,  
U. S. Senator, Wyoming, Democrat



IN connection with the packer's consent decree nearly every farm organization in the country, and nearly every livestock organization in the country, has petitioned the Attorney General to abate or nullify that decree, and they do so on the principle that it is inequitable to permit chain stores to peddle meats with groceries, and to deny the right to packers to peddle groceries with meats. They insist, in other words, that this livestock commodity, meat, as well as other food products, should be allowed to move from the producer to the consumer in an entirely unrestricted way, and on that basis they have asked for some modification of the decree, not an entire annulment.

As I understand it, they are against having set aside that part of the decree providing that the packers shall dispose of their ownership in stockyards. These associations which have petitioned the Attorney General ask that that part of the decree be permitted to stand, but they ask at the same time, that the packers be released from that restriction which denies them the right to sell unrelated products in the same car with meat food products.

The farm leaders, also the livestock associations who have asked for a modification of this decree, were among the very strongest advocates of the packer control legislation that was passed several years ago, and even during the time that legislation was under consideration the same organizations were strongly in favor of the packers going into the retail meat business as a means of increasing the economies of delivery of their products to the consumer.

At the time that legislation was under consideration here, this consent decree was entered into by the packers. Those of us who were making the best fight we could for the legislation at that time were not at all concerned about the decree, because we did not think it would serve any useful purpose, but thought it would prevent the packers, by their own consent, from going into the retail meat trade.

The people who produce this product would like to have it go straight to the consumer without obstruction of any kind, and one of the purposes of the legislation was to eliminate such artificial and unnecessary obstruction.

Another primary purpose of the bill was to increase the number of packing houses in the country and beyond a shadow of doubt this is one of the direct results of the legislation. There are many more packing houses now in operation than there were at the time the packers control act was possible. They have been initiated and developed into going concerns in every State in the Union. Though I have no definite information, it is my opinion that the three or four large firms involved in this decree are handling a smaller proportion of the meat-food products today than they have handled at any time during the last 40 years' time.

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### Con

HON. HUGO F. BLACK,  
U. S. Senator, Alabama, Democrat



THE packers ask legal sanction to enter into the present wild scramble for concentrated control of the Nation's business, already menacing the peace, comfort, and security of our people. The people must have food to live. Monopolistic control of this necessity of life must sooner or later bring hunger and despair, producing drastic action for relief.

This decree should stand. Monopoly should be discouraged, not encouraged and approved by governmental authorities. Chain groceries, chain dry-goods stores, chain drug stores, chain clothing stores, here to-day and merged to-morrow—grow in size and power. Railroad mergers, giant power monopolies, bank mergers, steel mergers, all kinds of mergers, concentrate more and more power and wealth in the hands of a few. In the name of "efficiency," monopoly is the order of the day. The giant business enterprises spread over our Nation, extend their tentacles into our schools, politics, and business. We are rapidly becoming a Nation of a few business masters and many clerks and servants. The local business man and merchant is passing, and his community loses his contribution to local affairs as an independent thinker and executive. A few of these useful citizens, thus supplanted, become clerks of the great chain machines, at inadequate salaries, while many enter the growing ranks of the unemployed.

A wild craze for efficiency in production, sale, and distribution has swept over the land, increasing the number of unemployed, building up a caste system, dangerous to any government.

If the packers, consent decree is modified, the Sherman anti-trust law is in reality dead. It will behoove the representatives of the people to find some other method of protecting the people from the rapacious greed of monopoly. If huge mergers and stupendous monopolies are to be granted the privilege of supplying the necessities of the people, it can not but lead to an extended governmental supervision of business and general regulation and restriction of profits. Business profits must be controlled either by the method of enforcing competition or by strict governmental regulation of profits, which few desire. This would mean new bureaus, and would release swarms of Federal and State agents to hamper the ordinary processes of business. We are to-day at the crossroads, and the Attorney General's action may send us definitely along a path of competition or strict business regulation of profits.

I do not believe that the farmers of this Nation want the packers, with all their huge aggregation of money and of power, to have the possibility of getting control of the food supply of this Nation. I do not believe that if the farmers knew that the packers themselves, in their very petition, stated that the time is only a few years off when less than five companies will control the entire trade in

*Continued on next page*



## Pro

HON. JOHN B. KENDRICK—Continued

It is possible that the packers do handle a somewhat larger proportion of the meat-food products purchased and prepared in the central markets, but throughout the country as a whole, due to the increase in the number of packing houses already referred to, and to the volume of business handled by them, I think the statement as made will prove entirely correct. All of which means that the business is now divided among a larger number of firms than it has been at any time during the past few years.

A packer should be allowed to deliver this product without interruption and without restriction, so that he can practice such economies as will bring it to the consumer in a way to increase, if you please, the price to the man who produced it.

This principle is illustrated strikingly by the great meat packers of Great Britain who, as I am informed, retail meat-food products all over the Empire. That ought to be done by the packers of this country and that is the reason why they should be allowed to proceed in their own way. Such a plan would bring about economies in the handling of our product in this country. We do not consider it any more dangerous to the public welfare for a packer to sell canned groceries with meats than it is for a chain store to sell meats with canned groceries.

I have no patience with monopolies and no sympathy with monopoly of any kind. This attitude was demonstrated without any expression from me in the 3-year fight we had on the floor of the Senate to secure the packers control act as a law.

The packers ought to be released from this restriction or the chain stores ought to be placed under the same restriction.—*Extracts, see 3, p. 224.*

CONRAD H. SYME, CHARLES J. FAULKNER, JR.,

NELSON T. HARTSON and FRANK J. HOGAN,

*Attorneys for Swift & Co., Armour & Co.,*

FUNDAMENTAL and nation-wide changes in methods of marketing and distributing commodities including food products have occurred since the entry of the decree of February 27, 1920. In 1920 and prior thereto the general method employed in marketing and distributing commodities ultimately sold at retail was from manufacturer — to wholesaler — to retailer — to consumer, and under such conditions the manufacturer, wholesaler and retailer each performed separate and distinct functions. Since 1920 there has been a pronounced and nation-wide movement in the food industry and in many other industries to effect economies and enlarge sales and reduce the ultimate cost to the consumer. The principal method employed to effect this result has been a consolidation of the various market functions by making food and other commodities move directly from manufacturer to consumer without the intervention of the wholesaler or independent retailer. This change in marketing methods has been initiated both by the manufacturer in establishing retail outlets for his products and by retail stores in entering the manufacturing field and producing some or a part of the products they sell, and this in turn has compelled wholesalers, jobbers and other middlemen to

*Continued on next page*

## Con

HON. HUGO F. BLACK—Continued

bread and other food supplies of this Nation, they would favor the Attorney General or any other officer of this Government removing any barrier which might block such a stupendous monopoly from coming into existence.

It is my judgment that the farmers of the United States would not approve the action of the few farm leaders, or so-called farm leaders, who got together in this matter in an effort to bring about a release of the packers which would turn them loose to go over this country like devouring wolves monopolizing the food supplies of this Nation.

Taking their own logic, it necessarily follows that this Packers' Trust will soon absorb the four or five smaller companies, and the price of the bread that every man buys from Maine to California, from Canada to the Gulf, will be fixed by one packer's chain-store trust and monopoly.

The packers ask for the right to-day to establish a chain-store system in every section of the United States, which they have the money and the power to do, not for the sale of meats alone, but for the sale of groceries of all kinds, for the sale of building material, for the sale of hardware, for the sale of practically everything in the world that can be bought or used. Then they ask to be relieved from this decree so they can operate a railroad, so they can operate terminals, so they can operate newspapers.

The chain-store system are entering into every hamlet and town and village in the United States. They are destroying business initiative of the individuals who built up those communities. The banking system is attempting now to establish a huge chain that will control the credit of the Nation from the great cities of the country. They want the remote control of credit. With remote control of credit, the remote control of the prices of groceries, the remote control of the prices of everything we buy and use, what will be the situation? The power companies have reared their stupendous trust until to-day it stands across the Nation from one ocean to the other. Prices are fixed. Monopoly is there. The people pay the bill.—*Extracts, see 3, p. 224.*

W. K. HENDERSON,

*Station KWKH, Shreveport, La.*

HERE is a case now pending in the Supreme Court of the District of Columbia which involves not only the litigants named, but is of far-reaching importance to the people of our country. We refer to the commonly known Packers' Consent Decree.

This case becomes of more than passing importance in view of the fact that it was doubtless instituted at least in part by reason of a report of Herbert Hoover, then food administrator to President Wilson, dated September 11, 1918.

Mr. Hoover, in his report touching this particular subject, in part, said:

"I scarcely need to repeat the view I expressed to you nearly a year ago—that there is a growing and dangerous domination of the handling of the Nation's food-stuffs x x x.

"The problem we have to consider, however, is the ultimate social result of this expanding domination, and

*Continued on next page*



## Pro

CONRAD H. SYME, CHARLES J. FAULKNER, JR., etc., Cont.

create their own retail outlets and to enter the manufacturing field. This change in marketing methods commenced in a small way prior to 1920 and the new method of marketing and distribution existed to a comparatively insignificant extent and with little or no appreciable effect at the time of the entry of the consent decree, but since that date the new methods of marketing and distribution have been developed to a high degree and have attained a proportion which was not anticipated or considered reasonably possible in 1920.

The above-described trend toward integration and the elimination of the middleman has been accompanied by mass production and selling and by an enormous development of brands, particularly as to food products and also by a tendency on the part of retail stores and particularly chain stores to handle a diversified line of products. Standardized mass production and the development of brands, with resulting assurance of uniform quality, have played a conspicuous part in developing the new distribution methods and in eliminating the middleman.

This trend is rapidly and continuously increasing, but the decree prohibits the defendants from adapting their businesses to the changed economic conditions. The normal outlet in 1920 for the products manufactured by the defendants was the wholesaler whose volume has been reduced to a large degree by the trend toward integration, and the independent retailers who have been substantially reduced in number and in volume of business because of the enormous development of chain store organizations. The decree prevents the defendants from following the marketing trend from manufacture to consumer and prevents the defendants from selling the unrelated commodities and developing brands therein and thus neutralizing the effect of the serious loss in the business formerly done by them with the wholesaler and independent retailer.

At the time of the entry of the decree, chain grocery stores were a comparatively small factor in the sale and distribution of food products and were a negligible factor in the sale and distribution of meats. The total number of chain grocery stores in the United States has increased from approximately 27,000 in 1920 to approximately 75,000 in 1930; the total sales of all grocery chain stores in the United States have increased from approximately \$700,000,000 in 1918 to approximately \$3,500,000,000 in 1929; and the total sales of the leading grocery chain store organizations in the United States have increased approximately 255 per cent from 1920 to 1929. At the present time approximately 40 per cent of the retail grocery business of the United States is done by chain grocery stores.

Because of this modern tendency toward diversified lines and general food stores, the removal of the restriction of the decree regrading the maintenance of retail meat markets would not be effective to relieve the defendants from their present prejudiced position unless corresponding modifications are also granted as to paragraphs 3rd, 4th and 5th of the consent decree which relate to the commodities known as unrelated lines.

Under present conditions the decree is inequitable, and unnecessarily prejudicial to the defendants because it denies to the defendants the right to engage in the lawful

## Con

W. K. HENDERSON—Continued

whether it can be replaced by a system of better social character, and of equal economic efficiency for the present, and of greater promise for the future. It is certain, to my mind, that these businesses have been economically efficient in their period of competitive upgrowth, but, as time goes on, this efficiency cannot fail to diminish and, like all monopolies, begin to defend itself by repression, rather than by efficiency. The worst social result of this whole growth in domination of trades is the undermining of the initiative and the equal opportunity of our people and the tyranny which necessarily follows in the commercial world."

This terse statement of Mr. Hoover is almost prophetic, in the light of present conditions—"of the growing domination of the handling of the Nation's foodstuffs."

The Packers' consent decree was entered with a view to preventing a long feared monopoly in meat and other food products.

Senator Norris, of Nebraska, stated on the floor of the Senate on January 17, 1930: "At the time this consent decree was entered into there was pending before the Senate Committee on Agriculture and Forestry some very important legislation having to do with so called big packers, the Packers' Stockyards Act, and there was a very sharp contention as to what should be included in the legislation. x x x I think I make no misstatement when I say that the object sought to be attained by that decree was, in part, the object sought to be obtained by the then pending legislation.

"Congress would have legislated, without any doubt, had this decree not been entered into—and the decree was entered into for the purpose of preventing legislation by Congress, with the object, I think, of having it all set aside as soon as Congress adjourned.

"When Congress adjourned, about the first thing that happened was that the packers attacked their own decree, and they have been fighting ever since, either to get it modified or to have it declared unconstitutional. They have gone to the Supreme Court two or three times.

It must be borne in mind that the Packers' consent decree was entered with their consent, and, we believe, at the solicitation of the packers, and, by the decision of the Supreme Court rendered March 28, 1929, every question that ingenuity of counsel could raise, as against the validity of that decree, was presented and decided against their contentions.

Despite the opinions of the Supreme Court sustaining the validity of the consent decree, Swift & Co. and Armour & Co., in August, 1929, filed their application for modification of the consent decree, to the extent that they be permitted to own their own retail meat stores; to manufacture and distribute grocery products; and to use their vast systems of distribution in the distribution of their products.

The granting of the packers' application is to modify the terms of the decree in such a manner as will, in fact, be a vacation of the decree. They do not desire modification; they seek nullification.

The reasons alleged by the packers in their petitions for modification of the decree are, that by reason of economic changes, the chain store systems of the country have grown and are now so powerful as to prevent the possibility of the packers to establish a monopoly in the

## Do Chain Stores Benefit the Farmer?

Pro

J. C. PENNEY

*Chairman, Board of J. C. Penney Stores*



HEREVER general business conditions have been carefully studied before and after the advent of chain stores in a town, it has nearly always been found that more money came into the town subsequent to the opening of the chain store than was the case previously.

This expansion in retail sales volume is usually due to the fact that the chain stores bring an extension of the lines offered by local merchants. A greater range of selection is offered customers and, because the chain stores usually handle items adapted to widespread distribution and on the basis of mass production and volume purchases, more attractive prices are presented.

Chain store managers and employees in general are trained in service, in rapid turn-over of stock, in rigid control of operating expense. Profit margins on single items are low and savings in expenses of operation are passed on to the customers.

These facts are known to purchasers all over the country. They are attracted to cities and towns where they can get the values offered by chain stores, and they bring their money with them instead of sending it to other localities where they had previously done their buying, oftentimes largely by mail.

The largest buying group in the United States is that group represented by the American farmer. A visit to any community on Saturday night will substantiate this fact. In every street in the business section of the town automobiles are parked against the curb in solid lines. Saturday's business in many stores accounts for from fifty to sixty per cent of the total sales for the week. And a large percentage of Saturday's business is done by people from the farming districts.

During the past twenty years, great changes have taken place in living conditions on the farm—greater even than those which have taken place in the cities. Electric power lines, or individual electric power plants, have materially added to the comfort of living on the farm. Telephone connections have brought the farm home in instant touch with the trading towns.

With fewer organizations handling a line of merchandise—because of direct shipment through the central buying organization to the retail store—it becomes possible for new styles and new qualities of be placed before customers within a few days after they come on to the market.

Instead of being restricted in her choice as heretofore, the woman from the farm can obtain what she wants from a range of stock equivalent to that previously carried only in larger stores located in distant cities. In short, she can get what she wants and not be obliged to accept what the storekeeper has to sell.

Furthermore, chain stores will be found to offer not only opportunity for the individual farmer to spend his dollar for needed merchandise to his own advantage; but, keenly analyzed, they will be found to further the interest

*Continued on page 222*

Con

J. H. McLAURIN

*President, American Wholesale Grocers' Association*



ODAY, due principally to the mushroom growth of the chains, the distribution of the most important of products, foods, is in a demoralized and chaotic condition.

This chain store growth has taken place mostly in the more populated sections, and for that reason the farmer is interested in them more as an outlet for his product than as a source of his own food supplies. In the middle of 1928, an authoritative survey showed that 94 per cent of the grocery chain stores were in the most populated counties of the country. In the least populated counties, the chains had only 2½ per cent of the total number of grocery stores.

Competition between chain stores has stimulated eagerness among themselves to buy certain standard goods at lower prices. If a chain operator should advise all manufacturers—and such instances have been reported—that he will place no more orders except on terms of 3 per cent for cash in 10 days, with 30 days dating, in order to secure standard goods to be used as special "loss leaders" in attracting business, then, since the chain store is said to turn its entire stock every twelve days, this would result in the chain store business being financed by the manufacturer. This is not a sound practice, the fallacy being that the public is led to believe that special cut rate prices apply to the chain store's entire line, when, except for monopolistic tendency, the other items of the chain store line must make up in profits any amount lost on special "loss leaders."

The practice of selling "loss leaders" by grocery chains is working a hardship on garden products, butter, eggs, and milk. In some sections, according to reports received, this method of merchandising makes it unprofitable for farmers to raise vegetables and other farm products, and is adding a hazard to a condition that has long been serious in the country's greatest business—farming.

When the chain store makes a football of the farmer's product, either by depressing the price that it pays the farmer for the product or else by retailing the product at a price considerably less than its market value, it has thereby established a low false value on the product, compelling competitors to buy from the farmers the same products at less than the value, thus rendering the chain store, because of such unsound practice in buying and selling, an enemy to the producer.

Farm leaders recognize the disadvantage the producer is under when he has to sell his products to large and powerful organizations like chain stores, and plan to overcome that difficulty by getting the farmers to sell through large co-operatives. How well, even then, they shall be able to demand that the chain stores give them a fair outlet for their products is apparently open to question.

Chain food distribution apparently depends upon the public belief that the stores are selling all items far below their actual margin of profit, and to create this fallacy

*Continued on page 222*

## Does the Chain Store System Threaten the Nation's Welfare?

### Pro

THE NATIONAL WHOLESALE GROCERS' ASSOCIATION OF  
THE UNITED STATES



Is it better for America that retail business be in the hands of a vast number of individuals or in the control of a few gigantic corporations? The system that contributes the greater net benefit to the welfare of America should prosper and prevail.

The burden of proof rests clearly upon the chain store. The manufacturer-wholesaler-retailer method, representing local ownership and local operation, is a natural economic and social product of the ages. Twenty to thirty millions of America's population depend upon wholesale and retail business for their livelihood. The chain system received its impetus after the dislocation of mercantile and social conditions following the World War. It is the challenger.

Its proponents must establish the alleged efficiency of the chain stores and offer more than their own opinions as proof. They must compare the costs of their services with the costs of similar services offered by the independent merchant. The typical chain store asks cash terms, does not deliver, offers severely restricted stocks of standard quality, urges rigorous buying policies on manufacturers, converters and farmers, practices shrewd and varying pricing methods, avoids the responsibility of community citizenship and holds down local expenses to the minimum. The typical independent merchant grants credit, delivers, offers complete stocks according to the demands of his individual community, is not so adept at modern tricks of merchandising and must be, in the nature of things, a full-time citizen. When costs of doing business are compared all these factors must be considered.

When the friends of the chain store insists that they are not anti-social, they may not advance the economic argument as representing the complete answer. They must explain how and why absentee ownership of local enterprises is more desirable socially; how and why the itinerant store manager system is superior to the independent business men and permanent citizen system; how and why the system of drawing off the net cash surpluses to the great centers is more beneficial to the community and the nation; how and why America should encourage further concentration of power and wealth in the hands of a few and if so, why America should, submit to a growing commercial despotism even if it might be benevolent and not predatory.

And all arguments should be carefully sifted not only as to their accuracy, but as to their authority. A huge prize is at stake.

It has been said by economists for many years that manufacturing processes have been improved more than have those of distribution and it is generally admitted that mass production has brought about some benefits both

*Continued on next page*

### Con

R. W. LYONS,

*Executive Vice-President, Nat'l Chain Store Ass'n.*



ON the basis of absolute and evident accomplishment we cannot evade the simple fact that the chain store has made the most important single contribution of the century to the science of distributing and marketing. First let me say—that no one recognizes more fully than does the chain store merchant that the functions of the manufacturer, the wholesaler, and the retailer are inescapable necessities in the larger function that we call distribution. But the chain store has no reverence for traditions or forms or systems—by whatever name—which hamper efficiency and burden the consumer.

The chain store idea itself is not new; the only thing really new about the chain store must be found in the conditions which surround our new civilization and which have projected the methods of the chain store as inescapably as the closing years of the nineteenth century projected the world wide evolution of industrial and manufacturing methods.

What are these new forces and circumstances which have never been joined in any previous civilization; and which, because of their power, have projected and supported this merchandising instrumentality which we call the chain store? They seem to me to be as follows:

1. The movement of our people from the country to the cities with its consequent concentration of sales areas, making possible the efficient maintenance of central distributing warehouses and a new application of the science of merchandise turnover.
2. The facilitation of the cash and carry mechanism by the introduction of the automobile.
3. Public recognition of and resentment at the steadily rising costs of the necessities of life during a period when manufacturers were fabricating more cheaply than at any time in the history of the world.
4. Installment buying, with its upward revision of the standards of living through wider distribution of luxuries, and the consequent necessity for more careful budgeting of family expenses in the field of necessities.

These are the epic movements from which the chain store was born. Whether we like the chain store or not, the full history of institutional development seems to indicate that it is here to stay and since it is to stay, is it not better by far to search deeply for the lessons of its success than to waste our spirits and our energies in idle condemnation?

Just as the secret of mass production is to be found in standardized articles produced at small unit profit, so the secret of mass distribution is to be found at the same source. While manufacturers have been exhausting themselves to reduce expenditures, to analyze purchasing power, to cut transportation costs to the bone, and to in-

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## Pro

## NATIONAL WHOLESALE GROCERS' ASSOCIATION—Cont'd.

economic and social. Those of an economic character are generally more evident and those of a social nature more indirect and more difficult to prove. But for the time being, admitting without question the advantages of mass production, it is fair to question whether the same principle can be applied to distribution.

Is there not something inherent in retailing that is not true in manufacturing? Is there not something lost of individual initiative, responsibility, self-reliance, citizenship and relations between the individual and his community that after all is essential to America? Even if all that can be said in favor of mass manufacturing is true, does it apply to retailing, agriculture and the professions?

If the chain theory is right, why should it not be carried to its logical conclusions and be applied to religious institutions? It can easily be argued that having half a dozen religious establishments in every community is a waste. Why not abolish local small churches and have a central radio preaching station in the larger cities and broadcast sermons over the country? Efficiency can be carried too far. Sooner or later it comes into conflict with humanity. Already there are signs that there is a general reaction.

But even in the boasted efficiency of chain stores we must rely principally on the testimony of the chains themselves. We have little impartial authority for the degrees of their efficiency.

Then, too, the social side of the question is more important than the economic. Even if chain stores do save pennies for consumers, does that offset their social disadvantages?

Main Street was lined with the stores of small individual merchants a few years ago. Then came a chain store and soon others followed. After all the small retailers had been displaced and their places were taken by chain stores the question of the savings came up at a woman's meeting. The wife of an ousted retail merchant told the story of her husband being forced out of business. Was it better for the women of that town to save a few cents or to have the breadwinners of their families deprived of their means of livelihood?

There is another tendency that is worth watching. In the last few years many of the medium size chain stores companies have merged or have been absorbed by others to form larger and larger corporations. It has been predicted that in a few years there will be only three or four large chain companies in the great food industry of the country. Remember that food represents one of the largest expenditures in the family budget. It is only fair to agree with chain store men that food monopoly is impossible, but if there are only three or four large corporations in the grocery trade they may become so large as to be dominant price factors; affecting what the producer receives and what the consumer pays.

But how about women? We have been told by marketing experts that the women make more than nine-tenths of the purchases of all goods bought at retail. Do women want farmers, doctors and churches standardized and mechanized? Will women throughout the country submit to dictation of the headquarters of great chain organizations in a few large cities about what they shall eat, what they shall wear and what they shall have in their homes? They see quickly enough that chain stores mean the greater and greater growth of large cities and the further and further shrinking of other towns.

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## Con

## R. W. LYONS—Continued

crease inventory turnovers, there has been until recently no comparable intelligence or effort applied to mass distribution. The chain store, and those who have profited by the example of the chain store, are now doing precisely this service for distribution.

Mass production and mass distribution have gone far in eliminating waste by reducing processes to their simplest forms. This in the case of chain stores takes the form of standardized equipment, standard stocks of merchandise, standard business procedure and records. They have been able to systematize employee training, location of stores, selling methods and advertising. They have been able to economize through intelligent buying, rapid turnover of minimum stocks and elimination of unnecessary service.

The chain store, in other words, has applied rational scientific procedure to the whole field of distribution. The success of mass distribution and mass production had depended upon method; the rational coordination of observed facts.

There are those who cry out that if the chain system is to continue, the highways of commerce will be strewn with the wreckage of those businesses which are unable to readjust themselves to the pace it sets. Perhaps this is inevitable, but the public is entitled to demand of every retail merchant that he wage a ceaseless war on waste. The public is entitled to the best retailing service which human intelligence can devise. Its patronage of the chain store indicates its recognition of the contribution of this mechanism to the cause of efficient public service. And efficient public service alone can justify a retail merchant in asking his community to support him.

To those who say that the chain store is driving the independent merchant out of business, I can only point out that the ratio of failure among independent merchants is no greater now than it has been for 40 years, according to the figures of Dun's and Bradstreet's.

To those who would say that the chain stores are drying up the springs of opportunity for young men throughout this great land of ours, I would answer that throughout the history of independent retailing, nine out of ten individual merchants have failed in each decade. And the ratio has scarcely varied a fraction during these great years of chain store growth. Supplementing this fact, I would like to ask when it became necessary in this land of ours for a young man to own his own bank in order to seek a banking career? Must a youth forever destroy his ambition for a career in railroading because he cannot buy a railroad for himself? Must life and vision be crushed out of the young men in the motor car field because each one cannot own a vast manufacturing establishment?

There are those who charge chain stores with paying starvation wages. I must point out that no chain store (nor any other business enterprise) is ever able to secure regular and competent help at a wage which is lower than the average standard of wages paid for similar services in a given community.

To those who charge that chain stores pay less taxes than the local merchant, there are many answers. The first is that the chain stores pay more taxes per store in every field we have investigated than do similarly situated independent merchants. Again, if a chain store does not own its property, it pays a rental for every foot of space it uses. The value of chain store buildings has

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## Pro

## NATIONAL WHOLESALE GROCERS' ASSOCIATION—Cont'd.

The U. S. Department of Labor has recently published a pamphlet entitled "Women in 5 and 10 cent stores and Limited-Price Chain Department Stores". Miss Mary Elizabeth Pidgeon, author, writes that it was found that "selection of the girls for the job was governed by what type of girl could be obtained at the particular time she was needed for the lowest wage the market could stand." Out of 70% of the women employed in chain stores, numbering 6,000 in eighteen states, the report states, that where the records were examined these women are being paid less than \$15.00 a week. Indeed 40% are paid less than \$12 a week.—*Extracts, see 11, p. 224.*

J. FRANK GRIMES

President, Independent Grocers' Alliance of America.



HIS whole question of retailing is eventually going to be one of great national importance because of the very character of retailing. The prosperity of our country is largely made up, as anybody will admit, by the success and prosperity of many thousands of little communities scattered throughout the country.

In Chicago or New York or any other big industrial center, if it were not for the fact that back in the little cities and villages there is business going on, profits are being made, and because of these profits, they will buy a lot of things, you would have a very different situation.

You will find if you recall the town you came from, that most of the business there is the retail business. The very life blood of one of those cities is the profit that is made there. If you were to skim the profit out of those towns, you would take out of it its commercial life blood.

Now, you cannot skim the profit off of the home town and the thousands of individuals there, constituting the backbone of this country, without bringing about something serious to think about; and in those towns the retail business is all there is in most cases, and the retail business, by its very nature, by its very part in American life, is a local proposition. It supplies that life blood profit that makes for growth and makes New York and Chicago possible.

Briefly let us see what major factors are contributing to this local prosperity:

1. Profits made therein of which a large part remains there to develop new enterprises—build new homes—buy new furniture—buy more and better clothes—buy automobiles—radios and countless other things that contribute to general happiness and welfare. Profits provide the means wherewith local inhabitants travel to all parts of the country on pleasure or business trips. Profits provide the means for development of better educational facilities, churches, etc. Profits provide the one absolute essential for sending the growing young men and women to colleges and schools of higher learning and art. Practically all of these essentials to modern living are purchased from our large industrial centers and cities and constitute the greatest contribution to American production. Add to all this general agriculture, stock raising, etc., and we account for at least 80% of our business.

2. Locally owned prosperous businesses provide opportunities for ambitious, efficient young people to go into business for themselves and begin that needed training in executive capacity and business responsibility. These smaller communities have become the training ground for

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## Con

R. W. LYONS—Continued

increased out of all proportion in recent years because of the high earning power which the genius of chain store management has made possible. It is upon such increased valuations that the tax authorities assess this property. And it is only with his assessments for taxes clearly in mind that the landlord fixes the rental for his property. So, indirectly, the chains have increased the taxes of this land unbelievably. Directly they have contributed to an enhancement of real estate valuations running into unimaginable figures.

To those who charge that the growth of chain stores tends to create a monopoly controlled by a few, with vast power for potential harm, I can only point out that there are in this country today more than 6,000 chain store companies operating under separate ownership and management, each in competition with the others in its field. Under such circumstances, any suggestion of monopoly is fantastic and visionary.

To those who see in the chain store an added mechanization of our civilization and who deplore the passing of the colorful and lovable independent merchant, let me point out that the results are dependent wholly upon public opinion, based upon individual efficiency.

It is to the task of providing every human being with the necessities of life, and with as many luxuries as possible, in the most efficient manner and at the fairest possible price, that the service of the chain store is dedicated.—*Extracts, see 5, p. 224.*

GODFREY M. LEBHAR

Editor, Chain Store Age



HETHER an institution is really to be regarded as a public asset or a public burden can be arrived at only after its advantages have been weighed against its shortcomings.

Let us take up, then, some of the alleged shortcomings of the chain store method of distribution. Here is the full indictment—in eight counts.

1. The chains take money out of a community.
2. Chains do not employ local help.
3. Chains pay exceptionally low wages.
4. Chains take no interest in local activities.
5. Chains pay less taxes than local merchants.
6. Chains are of little value to local bankers.
7. Chains tend to make us a nation of clerks and limit the opportunity of American manhood.
8. The growth of the chain store system tends to centralize the business of the country in few hands.

It is charged in Count 1 that chains take money out of the communities in which they operate.

Well, the fallacy in that argument lies in the assumption that when the consumer spends a dollar in the Woolworth store in Peoria, let us say, the dollar is immediately transferred to New York but when the consumer spends a dollar in an independent store in Peoria, the dollar remains there forever.

Well, no one knows better than the independent merchant himself how much truth there is in that myth. No one knows better than the independent merchant himself that there is a creditor waiting for the major part of every dollar that goes into his cash register, and that his creditors—his jobbers or his manufacturers—are scattered all over the country.

In other words, that part of the consumer's dollar which

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## Pro

J. FRANK GRIMES—Continued

many of the executives that now are in command of our large industries and banks.

Nothing should ever be permitted to seriously impair the making of profits and the keeping open of opportunity for young people to engage in a business of their own. The day this happens, America will take its first step backwards.

Had I a boy, I would want him to have a chance to go into business for himself. But you can count comparatively few avenues, for the opportunities of the young man are very limited. Great hordes of young men are being turned out of college yearly with ability and with ambition no longer to be merely clerks. And their opportunity lies in the great retail and farming field of business industry, and we must open an opportunity in these fields for these young men of ability.

One of the greatest things that is wrong today and that is going to injure America, is this condition that many men in the retail business, whose fathers have been in the retail business, and many men in the farming business whose fathers were in the farming business, no longer want their boys to follow in their footsteps. And when a business gets in such a state that the fathers don't want their boys to follow them in it, something is seriously wrong, and America will suffer in future years to come.

Now, in this day, the mass idea of business is becoming a tremendous factor, as everybody knows. Mass operations, as the country grows big, involve doing business in a big way, and it is true that the little individual merchant, no matter where he is located, is up against a tough proposition trying to fight singlehanded against a powerful organization. That does not mean that just because he has a fight on his hands he does not have a place in our economic scheme.

So, in order that we may bring to those merchants at least some of the power possessed by the larger retail organizations, we do the same thing that they are doing.

We throw the wholesalers and retailers together, to produce a buying power that will get the same advantage, if there is any, in buying as any single large group will get.

The chain has no copyright on mass buying. The retailers have just as much right; they are just as efficient; they are just as intelligent, and they can engage just as smart brains to bring about these results as any chain or any other single group.

I deplore the fact that there is a fight taking place between the two. If this continues you will have it brought right under the dome of the Capitol, because you cannot take away from America those fundamental things that make up its success and in its place put that absentee ownership which has no place in the retail business.

I contend, the backbone of America's prosperity is in its farmers and merchants in the small communities, scattered from one end of this land to the other. There are engaged in these retail businesses and wholesale businesses seven millions of people. When you consider their families and dependents it is estimated that between twenty to thirty millions of our population, depend upon the retail and wholesale business of this country for their livelihood. Couple with this the farming industry, and we find that these two industries constitute the greatest factor in America's population and America's affairs.

Men managing big corporations in the big centers with no intimate knowledge of what this territory needs, send out their stores here to break down the individual in

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## Con

GODFREY M. LEBHAR—Continued

represents the cost of the merchandise never stays in the community where it is spent—no matter whether it is a chain or an independent who takes it in. In either event, it must find its way back to the manufacturer or the jobber who supplied the merchandise.

So far as that part of the consumer's dollar which is required to cover the retailer's operating expenses is concerned, it remains in the community in either case. The chain has to pay rent and wages and for light and heat and other local expenses just the same as the independent.

When we come to consider that part of the consumer's dollar which represents the retailer's net profit, it is true that in the case of the chain it does find its way to the chain's headquarters, wherever they may be, whereas the independent merchant's net profit is spent locally—perhaps. I say perhaps, because there isn't any law which prevents a local merchant from spending his profit wherever he sees fit, and you gentlemen know best where your profits go.

But against that small fraction of the consumer's dollar which represents the chain's profit, and which, in the case of the grocery chains, amounts to less than 3 cents, you have to offset the saving the consumer makes in the shape of lower prices, which as we have seen, is a far more considerable item—a matter of 13 cents on the dollar. What of it, then, if the chain does send 3 cents to New York out of every dollar it takes in, when it leaves, not only in the community, but what is more to the point, in the consumer's own pocket, a matter of 13 cents!

No, Count 1 in the indictment against the chains must be dismissed. When you consider that it is not the fractional net profit, nor the operating expenses, but the cost of the merchandise which mainly determines how much of the consumer's dollar goes out of the community in which it is spent, and when you realize that the independent pays more for merchandise than the chain, you can readily see that if anyone is responsible for putting local money out of local circulation it is the independent—not the chain.

Let us take up Count 2—the chains do not employ local help. The best answer to that charge is that it is not true, except as it applies, in some cases, to the store manager. In the grocery field, even the store managers are usually local men, but in the case of some of the other types of chains, like the F. W. Woolworth Company or the Liggett Drug Stores, store managers usually come from other cities. That is a necessary consequence of the policy followed by almost all chains of appointing their managers from the ranks of their own employees. Obviously when a chain enters a town where it has never operated before, it cannot put a local man in charge of the new store without departing from the policy of promoting its worthy employees.

But, after all, what difference does it make? Bringing new people to a town is what makes a town grow. How would towns ever develop if they excluded newcomers? What kind of a community would it be that hung out a sign: "We are interested only in local people. Let no others enter!"

When a chain store opens up in a new town and an out-of-town manager is put in charge of it, that town not only has a new store but it has a new resident—a new rent payer, a new consumer of local commodities, a new church member, a new neighbor, a new voter—perhaps a new property owner.

Instead of being a detriment to the community, the fact

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## Pro

J. FRANK GRIMES—Continued

business. They don't understand what the west or any other part of this country needs, or how it really lives or how it exists. All they are after is to get profit out of it, a small profit out of it, and what happens in that community they are not concerned with.

A farmer comes into town where chain stores are located to deliver his eggs and sell his produce. What do we find? We find that the chains take some of the produce and very frequently, at first, pay more than the independent retailer. Then they put this produce out at near cost, forcing the independent retailer in that neighborhood to sell at about cost. And the next day when the farmer comes in with a load of potatoes they will say: "Look at the retail price of potatoes? We cannot pay you that price." The constant aim and the constant struggle of the chain system is to beat down prices, to beat down what they pay the farmer. They publish statements as to how much they are saving the public but they don't tell you at all that they are taking out more than they are putting in. They will beat down the farmer because it is inherent in the system that they placate the public with lower and lower prices. They make the producer pay the bill! Is it just a coincidence, that from the time the chains reached their ascendancy and began their rapid growth, that in the same period of time the farm industry has reached its greatest financial depression?

It is a known fact that the wage system of the chain stores brings low wages. This is a subject of supreme importance. It is opposed to all modern theories.

They feel that by reason of their system, that they must buy labor just as cheaply as it is possible to buy it. Because of this, chain stores have found that they cannot afford young men. They are hiring girls and women and some stores are putting in women as managers.

And then pilfering comes with the chain store. Court records, across this country, substantiate this. Chain store managers are charged with merchandise when it comes into the store, and they must produce either the cash or the merchandise with a very insignificant amount left for waste. We find the consumer is being pilfered of millions of dollars.

"Big business" is not in its right sphere when it enters into retail trade, business that should always remain individual, a business that must support and direct the spirit and enterprise, of our countryside. When you destroy that force or when you permit it to be destroyed, look out that the coming generation does not point its fingers back at us and say we were too selfish, and too self-centered.

It is a known fact that the wage system of the chain stores brings low wages. This is a subject of supreme importance. At this time in America's history we see constant effort being made to raise wages. We have learned through the last ten years in America to understand that increased wages make increased buying power of the people, makes them content and they buy more. Shorter hours in another factor. We have learned that when we give a man time to play and time to spend he makes a better workman. When we pay him more he produces more. The big companies in this country are seeking how to increase wages, and more production, and we have seen during the past six months in this country wage returns such as we have never seen before in American commerce, nor production so high.

We see another thing happening—a constant lowering of price or increase in profit through efficiency of busi-

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## Con

GODFREY M. LEBHAR—Continued

that the chain imports a manager from outside would seem to be a valuable contribution. And so far as the salespeople and minor employees are concerned, there isn't any truth in the charge that the chains don't employ local help.

Count 2 in the indictment isn't any more tentable than Count 1.

Under Count 3 it is charged that the wages the chains pay are exceptionally low.

Well, that isn't true either, and anyone with the slightest common sense would see that it couldn't be true.

I don't say that the chains in some lines and for certain classes of work don't pay low wages. What I say is they don't pay *exceptionally* low wages. Obviously they have to pay the rate of wages prevailing in their locality for similar work or they won't get any help. Chains have no means of compelling people to work for them. They have to compete for labor just as they have to compete for business. Furthermore, being an out-of-town concern with an out-of-town manager they cannot rely upon friendship to get local people to work for them.

That the rate of wages for certain classes of chain store work is low is true, but that it is lower than the market for such work is obviously false.

But it is also said that stores of the Woolworth type require only employees of low mental caliber because their method of selling is practically automatic. The answer to that is that without jobs of that character, most of the salesgirls who work in such stores wouldn't have jobs of any kind. In other words, when a 5 and 10 cent store enters a community it gives employment to a lot of girls who are fit for nothing better. Thus, it increases the community's purchasing power and benefits everybody.

It is charged in Count 4 that chains take no part in local activities.

No such sweeping charge can be sustained. The fact is that some chains do far more than their share for the communities in which they operate, while most of the representative chains contribute at least as generously to community projects as the average independent. The fact that some chains don't do as much as they ought to in that respect is offset by the equally obvious fact that a great majority of the local merchants are likewise remiss in their local duty.

Anybody would think from the criticism that chain stores have been subjected to in this connection that all local merchants are active Chamber of Commerce members, inveterate church goers, liberal contributors to every community activity, and models of everything a loyal citizen should be. Ask the secretary of any local chamber of commerce how many storekeepers in his community *don't* belong to the organization and you will find that they are far more numerous than those who do.

Before you criticize a comparative newcomer in a town for failing to participate in community activities, better be sure that the merchants who have lived there *all their lives* are doing *their* bit.

Under Count 5 it is charged that chains pay less taxes than local merchants. Of course, the tax rate is the same for all merchants, although if some of the anti-chain agitators have their way there would be special taxes against chain stores, in which event chains would contribute more to the local tax fund than the average independent. But what is referred to in this charge is the fact that although the tax rate is the same for both chain and independent, the chain pays less money into the local treasury because it operates with less stock.

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## Pro

J. FRANK GRIMES—Continued

ness. The great problem today is to see that this profit is properly distributed. The wage question is vitally important. I charge the chain stores with not following that bent of America's commerce at this time, that they feel by reason of their system, that they must buy labor just as cheap as it is possible to buy it. With this system the chain stores have found that they cannot afford young men. They are hiring girls and women to fill their places, and some stores are putting in women as managers, and I charge that the wages they pay these people do not belong in America at all, that these wages do not permit the person to live decently. I know of cases to my personal knowledge of young men being employed in chain stores being told, that is as long as they were clerks \$15.00 a week was the limit whether married or not, and until they got to be managers, that is their wages. Is that American? I know of places where girls are employed at wages so low that the moral status of this country is in danger. This is wrong; it is not American; it is unsound. Chain stores by their very nature because of absentee ownership, will not permit the directing force to understand local conditions; all they are after is to get the money out of it, irrespective of what it costs.

Here is a young man making \$25.00 a week. An independent merchant comes along and says to him, "I will take care of your budget, young man; I will supply all the necessities of your family on a certain plan, for \$20.00 per week. That will leave you \$5.00 a week to save, for entertainment or comforts that you don't really need."

Then a chain comes along and says to this young man, "Young man, you are a fool; how foolish you are to give him \$20.00. We will furnish your budget of \$17.00. You will save 15%." But it does not tell that young man, "Young man, you must work for \$20.00 a week, and when you get through with us you will only have \$3.00 for yourself instead of \$5.00."

The chain stores by their very nature, irrespective of the claims that are made for them, are a menace to America's prosperity.

When you can, by great buying power, force the producer to sell you goods at a price that brings him no profit, when you cut down wages to a point where they do not yield a decent living, and when you are actually forcing people in your employ to engage in practices that are morally wrong then, I say, that any organization that brings that about does not belong to America. This is a relic of feudal days and is the first step in America's feudalism. Retailing in this country has gone on for years, yet is efficient. Maybe it has not quite reached the top; practices may not be adapted to its community; but they are thinking they want to be part of that community, and aid in its growth, and they will stoop to those things which are not American.

Governor Weaver, of Nebraska, in an address on August 24th, made this significant statement:

"Private industry, private thrift and private enterprise are the greatest assets of this nation today."

And then he said:

"When you are fighting, fight for the individual, and then you are fighting the fight for future America."

The chain stores are making statements to this effect, that certain retailers are inefficient, but we will always have that, and in fact I know we have inefficient chains. You see chain stores that fail to pay their rent; you see them going out of business; you see them being destroyed

*Continued on next page*

## Con

GODFREY M. LEBHAR—Continued

By the same logic you might question the patriotism of the citizen who pays no income tax only because he is unfortunate enough to have no income.

The fact that the independent merchant has to pay personal property taxes on a lot of dead or slow moving stock which he has accumulated only through his own inefficiency is surely no reason why the chain store, which keeps its stocks in a healthier condition and moves them rapidly, should be condemned. So long as the chains pay their just taxes on the stocks they do carry, and there is no claim that such taxes are evaded, I cannot see any justice in the complaint that they pay less than inefficient independents whose inventories run higher.

The fallacy in that contention is in overlooking the important truth that the real purpose of the retailer is to bring to the public the commodities it wants in the most efficient way. Tax paying is only an incident of retailing—not its main object.

The sixth count is that chains are of little value to local banks.

I take that to refer to the obvious fact that chains have no occasion to borrow from the banks, whereas local merchants operate largely on borrowed capital.

Well, it is true the chains don't borrow from the banks, but, in another way, they more than make up for their deficiency in that connection. Not only the local bank but everyone else in the community profits considerably from the trade which the chains invariably attract through their good merchandising, low prices and liberal advertising. The chains bring more nourishment to a community in this way than they require for their own sustenance, and the local merchants get the benefit, and because the local merchants thrive on the business the chains attract, the local banks profit, too.

In a western town of 10,000 population about ten years ago, a merchant bought a store from a man who had heard that the J. C. Penney Co. was to open on the same block, and who having heard a whole lot about the chain store menace thought it wise to get out from under.

What happened to the unsuspecting purchaser when the Penney Company did enter the town a couple of months after he took possession? Did he lie down and quit in the face of competition of the big chain store of which his predecessor had been so sorely afraid? On the contrary, he stuck to his guns, specialized in things the chain store didn't carry, featured the services the chain store didn't render, and offered the chain a brand of competition that any red-blooded, go-getting type of merchant always has at his command, and fattened on the business the chain store itself brought to his doors. Yes sir, he fattened to such an extent that within a few years he bought the building in which his store was located, and a year or two later he bought another building—the building which housed his chain store competitor. And when the Penney lease expired five years ago, and this far-sighted independent had a chance to throw the chain store out and to rent the premises to another merchant who did more for it, what did he do? He decided to hold onto the Penney Co. as his tenant, because he didn't want to lose the benefit of the business the chain store developed for him.

That is just an illustration of how the chains develop business for the communities in which they operate, and why, although they may not borrow money from the local banks, they help the banks in a far more substantial way

*Continued on next page*

## Pro

J. FRANK GRIMES—Continued

by pilfering; they are no more efficient than the really good retailer.

They talk about the labor costs being left in the town, but if you will analyze the figures, you will discover that the fifteen per cent that he talks about that the consumer has saved came right out of the people that work in the store; right out the farmers that drive up and sell their produce.

I heard the remark made the other day by an eminent chain store authority in a little discussion that the chain grocery store saved the American public last year \$300,000,000, using as their basis figures in the wholesale and retail business put out by various associations as a comparison.

Let me give you one illustration of what it means. Here is one institution of considerable size employing clerks in a grocery store that made last year \$1,000 net profit per store. If they paid the clerks the wages that those clerks should earn, \$25 a week instead of \$15, it would have wiped out every single cent of that profit. It is easy to say that you save the public \$300,000,000 when you turn around and take it out of the pockets of the wage earners. I do not call that saving money.

In the wholesale and retail field the awakening is now coming. There is no question about this. The wholesaler and independent retailer can match in economy, efficiency and merchandising ability any other system—if they put aside all false pride, old theories and ideas and work together. Unless they do they are doomed. If they should be pushed aside then our country will face the most serious crisis in its history. An issue of both political and social significance would have to be met.—*Extracts, see 2, p. 224.*

## PHILIP LIEBER

President, Shreveport (La.) Mutual Building Association



N discussing this problem, I am trying to visualize only the economic and moral effect on the people in general. I do not attack chain stores in general—only that type of chains owned and operated from a central point, whose motto is to take everything out of a community and which never thinks of recultivation or replenishment.

What effect has this system on the community generally? I am unable to find one lasting good feature. The story from all cities is practically the same. I have received information from eastern and northern and western and southern cities, and they all have the same story of the gradual elimination of the individual tradesman and store and the usurpation by the outside chain. In one of the largest western cities, not over a month ago, a financier told me that a very large chain had a year ago entered; the manager told him that it had lost over \$200,000 the first year there; it expected to lose a hundred thousand this year; break even next year, and then—watch their smoke! What kind of competition is it that can and is willing to do this? A business that must secure a foothold in a community by slashing prices in that fashion, admittedly too low to pay even expenses, is not morally worth anything to a community. Now, how many local businesses are forced to the wall every time one of these enormous chains does this?

The real-estate owner in business districts and the real-

Continued on next page

## Con

GODFREY M. LEBHAR—Continued

by boosting the community's prestige and increasing its drawing power.

Count 7 charges that the chain store system tends to make us a nation of clerks and limits the opportunity of American manhood.

I think the answer to that contention is amply furnished in a statement made recently by H. T. Parson, president of the F. W. Woolworth Co., when he said:

"Assuming for the sake of argument that the development of the chain store system might ultimately wipe out the independent retailer entirely, who shall say that would be an unmixed calamity? What is there about retailing that makes *ownership* such an important feature? One does not have to own a railroad in order to work out a successful accumulation sufficient capital to open a store of his own a bank to achieve success in the financial field. By far the greater number of successful men in every line of industry and commerce are but 'employees' of the companies with which they are connected, no matter how exalted may be the positions they occupy.

"The idea that it is necessary to own a store in order to achieve success in the retail field has absolutely nothing to support it. Compared with the uncertainty which confronts the average storekeeper, the many risks he runs and the obvious limitations of his vocation, the opportunity offered by a strong corporate retail enterprise, whether it be in the chain store field, the department store field, the mail order field or any other branch of business would seem to me to be far superior.

"Of course, if a man lacks ability, or character, or perseverance or ambition or any other of the basic quantities that are essential to success, he can't expect to go very far no matter what line of endeavor he follows. Certainly he could hope for little in the chain store field, while if he accumulates sufficient capital to open a store of his own it would be only a question of time before his own shortcomings would put him out of the picture—another failure added to the long list which exacts such a heavy toll from the public.

"But if a man has in him the stuff that success is made of, I can think of no form of retailing that offers better prospects than the chain store field."

And I could give a thousand examples of the opportunities the chain store field offers, to prove that Mr. Parson is right.

And so we come to Count 8—the growth of the chain store system tends to centralize the business of the country in fewer hands.

Well, I'm not only willing to concede the truth of that statement, but I'll go so far as to say that the very fact that the chain store system *does* tend to eliminate the weaker elements in the present scheme of distribution and put the retail business into the hands of more stable, more efficient organizations is one of the strongest points in its favor.

We have seen in our manufacturing industries how mass production has reduced costs and increased wages by eliminating waste and effecting other operating economies, and it is now generally accepted by those familiar with the problems of distribution that similar benefits would follow the development of mass distribution.

But, it is contended, if the business of the country falls into the hands of a comparatively few large concerns they will have the power to oppress the public. The fallacy in that argument has been clearly exposed by M. B. Skaggs,

Continued on next page



## Pro

PHILIP LIEBER—Continued

estate dealer are usually the first beneficiaries of the advent of the chain into a city. And these two have a great deal of argument for the chains. Why? Well, the representative of the chain will select a location and make a deal that it will spend a certain amount of money in alterations and will pay a certain rental for a term of years. Then the chain representative will tell the realtor that all their transactions are handled through a certain office and the commission must be split—there is the first cut in price for you—the wrong way, of course. From the standpoint of the individual owner, the propaganda is very favorable that this great chain is entering the city and spending a lot of money improving the business district and a nice lease is fixed. But what about the half dozen small businesses in half a dozen locations that are forced to quit; what about the half dozen stores all within a stone's throw of this chain that become vacant and no person of limited capital can get in?

I believe that it will be an actual experience that the day of the expiration of leases held by these chains will be a day of woe for the present landlords. The success of the chains is bound to create an overabundance of business locations, so that there will be many suitable stands vacant; and when these present introductory leases expire watch out; the chains will be the dictators, for they will have no competition.

Now, the local business houses being eliminated, what happens to the army of partners and clerks and delivery men and porters? These chains, in the first place, do not deliver and most do not credit. Here, then, are lines of work eliminated and groups of workers thrown out of employment and forced to seek what they can find. It is an actual fact that most of these outside chains are content with clerical help in office and in stores at the cheapest obtainable wage. There have been many popular salesmen and salesladies, working in locally owned stores in any community, whose annual earnings have exceeded the salary paid to many branch chain-store managers. Therefore, in the change from the individual store to the chain, you have an army of people whose wages and income have become greatly lessened, whose ability to be self-supporting has become greatly impaired, whose purchasing power is reduced to a minimum, and whose ability to lay aside anything for the proverbial rainy day is nil. Everything must be in proportion. The wages of one class of the people can not show too great a variance without affecting the earnings of other classes.

Does the chain give service? No! Does the chain give more value? Again I say "No." For years the people of the various communities have flocked to their local merchants, demanding and securing the best to be had, obtaining free delivery, often submission of merchandise to their homes with benefit of approval or return, then having charge accounts opened, and some never paid. As against this, take the crowds now flocking into these chains, paying cash for every item, and carrying the bundles home. Any efficient local merchandiser, in association with others in the same lines of business in various sections of the country, can purchase pretty nearly as cheaply as these chains, and could sell as cheaply if the people would be content with the same limited service.

The banks will tell you that the outside chains are selling their merchandise and sending their money to headquarters daily, the banks being used as nothing but overnight depositories. There is nothing local that these sys-

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## Con

GODFREY M. LEBHAR—Continued

the president of one of our great grocery chains on the Coast.

"It is true," he pointed out, "that great organizations represent a mighty power, and much has been said by those who lacked information, or who had given the matter but slight thought, or who were inspired by a misconception of their own self-interest, about the potential menace which this power constituted.

"To realize the fallacy of this argument it is only necessary to reflect for a moment upon the self-evident fact that the man or men who are capable of building these great organizations must be possessed of at least a normal amount of common sense. And, being possessed of ordinary common sense they have only to look back over history to realize that the slightest abuse of the power which they control will inevitably result in the ultimate destruction of that power and themselves with it."

The engineer at the throttle of the Twentieth Century, tearing along at sixty miles an hour, has the power to send a thousand lives crashing into eternity, but who gives that remote possibility even a passing thought?

Gentlemen, things worth having are worth paying for. If mass distribution is worth having, the slight element of risk involved in the possibility that great power may be abused is a small price to pay for it. Twenty-five years ago, the idea that "Big Business" was a public menace and something to be checked at all hazards was more or less common, and trust busting was considered a worthy governmental activity. Today the better view prevails that it is not *big* business we have to be afraid of but *bad* business. Surely the man who suggests that we ought to forego the benefits of mass distribution because great power may be abused is a "blind guide, who strains at a gnat and swallows a camel."

I have now covered every count in the indictment against the chain store system, and I have endeavored to show that none of them can be sustained. I do not claim that the chain store system is perfect, but I do claim that it is infinitely superior even in its present state of development to the antiquated type of store it is displacing, and deserves the support the public seems disposed to give it.—  
*Extracts, see 8 p. 224.*

WILLIAM HENRY SMITH

Article, "Barron's, The National Financial Weekly"



**P**OLITICAL and social agitation against the chains appears to have passed its crest; and, while it will undoubtedly continue sporadically, it is inconceivable that it can but momentarily and locally restrict the activities of a merchandising system which is so general in its benefits to mankind. The severity of the drop in the prices of chain-store stocks which has tended to increase the prevailing pessimism toward the industry, appears on further study to be no more than the correction of an overvalued condition.

As a process of distribution, the chain-store field stands pre-eminent. No other group has yet devised a method that is more economical or which passes on to the consumer a larger share of the benefits of mass production and lowered manufacturing or producing costs. The imitative character of the voluntary chain, the so-called manufacturing outlet chain, the co-operation of retail dealers in associations of one sort or another are evidence enough,

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## Pro

PHILIP LIEBER—Continued

tems are interested in and their expenditures are the minimum. They have to pay local taxes on their stocks; they have to pay local wages; they have to pay local rent. That is practically all they spend in any community. Do they contribute to civic things? Ask your church workers, your community chest, your educators. Do they own anything except a minimum stock at tax-rendering time? Ask your assessor.

The only thing I have in opposition to the chain system is the failure to become a part of the community in which they are making money. But it is this failure on their part—their thoughtless milking the cow dry, their bleeding the communities white, their taking everything out and putting nothing back—that will eventually, almost without the public being aware of it, finally stamp out this system.

There are already among the ranks of the outside chain systems some large enough to have monopolized the entire output of factories or to own sufficient stock in them to dictate where, when, and to whom certain products shall be sold and at what price. This ownership is being used in the various communities to the utmost in putting the smaller concerns out of business.

To the victor belongs the spoils has been a rule of history, but is there honorable victory to a concern that has never had a thing to do with the building up of any community to come in at the height of its power, finance, and might and ruthlessly push aside the many individuals who have done the pioneering and consign them to oblivion?

Economists and statisticians will tell you that it is only the inefficient individual merchant who is losing out and that the chain systems owe their success to the superefficiency which they have put into the great problems of distribution. If this so-called superefficiency must be achieved at the expense of starvation wages for the girls of our nation, at the price of such low compensation for managers and responsible employees that they can not become factors in their various communities, at the expense of that aloofness from everything civic and moral in which the communities are interested for which outside chains are now famous (or infamous), then I say give us back the old-fashioned inefficiency. A prominent real-estate dealer told me just the other day that the manager for a new chain store just favoring our local community with its attention complained about having to pay \$40 a month for a furnished apartment in this city; he said he would have to get one a little cheaper because his earnings did not justify that amount for rent. If this so-called superefficiency is lowering the cost of living, it is indeed lowering the quality of living, and it is lowering the production of the individual, measured in dollars and cents, and will eventually tend to lower and degrade the people financially. That is not the kind of lowering we need or want.

There is after all only one way in which fairness is going to win victory and that is by the thoughtful co-operation of the people. The people, the thinking people, have got to make up their minds to look at this problem from all angles. Local merchants have for years warned us against the use of catalogue houses; the number of people in the past using these was very small compared to the total purchasing population. But this is not the case with the outside chain that moves into the community, remodels a building, puts in bright new fixtures, and keeps everything fresh and bright, outsells on a few carefully selected items, and makes its own price on every-

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## Con

WILLIAM HENRY SMITH—Continued

if it were needed, of the basic value of this method.

It has been only within the past 10 or 15 years that the industry has made its most substantial progress. During this period, both publicly-financed and privately-owned companies have grown enormously both in number and size, and chain merchandising has expanded into almost every known retail merchandising field. The reason for this unusual expansion are three-fold: First, the growing inefficiency of the then existing system of retail distribution became increasingly apparent, thereby providing the opportunity; second, the gradual awakening of business men, generally, to the possibilities of the chain method of distribution created the stimulus; while, third, a tremendous impetus arose through the development of mass production, with its lowered costs, which failed to reach the consumer.

Chain progress in the more developed fields during the next 10 years seems likely to be conservative, growth will be dependent largely upon the increasing abilities of the chain to merchandise upon narrower margins between cost and selling prices. The elimination of the still inefficient retailers must continue, but only as chain operation becomes more efficient.

The agitation against the chains on the part of those who have been eliminated or who fear elimination through the greater efficiency of this system of distribution, is a natural one. It is a form of opposition which every great economic movement has encountered—from the introduction of machinery to the development of the department store. It has taken on a social and political character, and, in some instances, has become but a form of "racketeering."

The anti-chain legislation, largely based upon the theory of greater taxes upon increasing units under one operator, is thought to be in violation of the Fourteenth Amendment, and has been decided so in such cases where this issue was ruled upon. As long as there is a group who believe the cure for inefficiency rests in the passage of laws protecting the inefficient, efforts will be made to restrain the chain-store growth in this manner. Alert retailers have found, however, that the most substantial restraint upon chain-store growth has been to increase their own service and efficiency to equalize it with that of the chain, and hence they seek no legal or political assistance.

The social arguments against the chain contain every possible criticism that can be thought of, regardless of their contradictory nature. Two of these arguments stand out above the others, not only in their apparent inaccuracy but also because they are so frequently repeated. It is for these reasons we introduce them here. The first of these arguments is that the chains take money out of the community and thus impoverish it. A thorough analysis of this accusation does not disclose it to be the fact. The combination of the functions of retailer and wholesaler through which most retail merchandise passes, is assumed by the chain as a single function. Hence the proportion of the final selling price which leaves the community through the retailer or the chain constitutes the major part of the price, though it is probably slightly less in the case of the chain.

Except then for the respective profits of the retailer and chain store, the sums sent out of the community by the chain stores and by the independent retailers are not essentially different from each other. The profit margins of

*Continued on next page*

## Pro

PHILIP LIEBER—Continued

thing else. They are receiving the bulk of the purchasers of the communities and will do so until the people wake up to what the continuous shipment of their earnings out of the city and out of the State will in the end amount to.

It is a peculiar thing that all writers who take up for the chain system and defend the chains so very vigorously are noticeably silent on the great question whether the chains become community parts, of what is done with the profits made out of these communities.

In addition to draining these various communities by the withdrawal of profits from circulation locally, where they have in the past been used for development and building and investment and banking locally, there is a most pernicious feature of the outside chain centralized in one large city. It destroys local initiative. It tends to make of everyone in this particular line of business endeavor a mere routine-trained creature of habit, not thinking for himself, trained only to do as the central power directs. What of the future if this system takes the place of our past businesses? Some say that this is the age of inevitable change in the manner of doing business—will these same ones say that this will not make, if they are correct, the same kind of change in the thoughts, habits, education, training, and environment of our future generations—of your boy and your girl and of my boy and my girl? In the field of business in its various branches are the opportunities of devoting their talents to individualism going to be forever denied them?

Is business headed for such a superdegree of centralization that there will ultimately be one great national chain system for each commodity or group of kindred commodities, until each such chain will dictate quality of food, style of clothes, and kind of living quarters?

Are the United States of America to resolve into a feudal system of 125,000,000 souls with a couple of hundred overlords and all the rest of us eternally consigned to a condition of peasantry, whose chief duty will be to bring to the laps of these Molochs of business the fruits of our unremitting labor? The answer is in the minds of and the solution in the hands of our people themselves.—*Extracts, see 4, p. 224.*

## Pro

J. C. PENNY,

*Continued from page 212*

of the farmer in a way that does not occur to the casual thinker, i. e.: If the chain store can, through systematic savings in costs, offer a twenty per cent saving to retail customers in cotton, wool or leather goods, and other commodities, it automatically builds up a twenty per cent greater buying capacity on the part of the public. If the chain grocery store can offer an equivalent saving in fruits, vegetables, meats, or bakery products, it automatically builds up a correspondingly increasing purchasing power for the dollar spent for food.

Chain store savings are made not in reductions in prices paid for raw products but in intermediate costs which benefit neither producer nor consumer—those costs that levy the unfair tax on prices because of too many operations in handling between the producer and consumer.—*Extracts, see 6, p. 224.*

## Con

WILLIAM HENRY SMITH—Continued

the grocery chain, for example, rarely exceed 4%, and usually run around 2½%, of each dollar of sales, so the so-called impoverishing process proceeds at the rate of 2½% to 4%. Incidentally, of course, the same impoverishment must occur when money is sent out of the community for manufactured goods which runs from 60% to 80% of the final price. There is, however, another side to this picture. It becomes not a question of what the chain takes out of the community, but of what it leaves in the community through lower prices on its products. In this connection we have a most interesting study to offer as evidence. Mr. Malcolm D. Taylor in the Harvard Business Review for July, 1930, has published the results of a survey of grocery prices in a community located in a state politically opposed to the chain but socially otherwise, which seems to indicate clearly that the chain-grocery companies leave in the community, at their highest profit ratio, three times what they take out in net profits and at the ordinary profit rate nearly five times as much.

He reports the saving on 20 articles weighted for normal average consumption to be 12.55%. These savings are illuminating in demonstrating the benefits of chain grocery merchandising to the community; far from impoverishing it, they appear to increase its purchasing power by more than three times the highest profit ratio.

The second accusation is that the chain destroys the opportunity for the young men and converts us into a nation of clerks *rather than shopkeepers*. Those who know the chain-store field, know also the need it has for competent men in every phase of its business, and many recall the serious difficulties which some of the chains have experienced in obtaining an adequately trained personnel. The contrasts between the limited opportunity of the individual store-owner and the unlimited opportunity of the chain-store employee to become successively important to his company is a marked one. It becomes ever greater when the employee of the individual retail dealer is considered.

The effect of the chain store upon local real-estate values, the attraction of rural buyers to "chain-stored" centers, and the benefits of efficiency in the midst of inefficiency are other phase from which the local community benefits, and, far from being impoverished, it is undoubtedly enriched by the advent of chain merchandising.—*Extracts, see 12, p. 224.*

## Con

J. H. McLAURIN

*Continued from page 212*

the stores are slaughtering prices on those products, the value of which is familiar to the public.

An independent merchant's store is more than a farmer exchange where a maximum amount of goods is bartered for a minimum number of dollars. He is a community builder, and his place of business should remain the merchandising service station of its community and rural trading area. The interests of America's home-town merchants are interlocked with those of the food growers they serve and deserve the business confidence and trade of America's 30,000,000 farmers.—*Extracts, see 6, p. 224.*



## Pro

THE OPINION—Cont'd from page 204

Mr. Justice Hughes

sible. If these contracts leave any room at the point of the line for the usual play of competition between the dealers in the product marketed by complainant, it is not discoverable. Thus a combination between the manufacturer, the wholesalers, and the retailers, to maintain prices and stifle competition, has been brought about."

That these agreements restrain trade is obvious. That, having been made, as the bill alleges, with "most of the jobbers and wholesale druggists and a majority of the retail druggists of the country," and having for their purpose the control of the entire trade, they relate directly to interstate as well as intrastate trade, and operate to restrain trade or commerce among the several states, is also clear.

The questions involved were carefully considered and the decisions reviewed by Judge Lurton in delivering the opinion of the circuit court of appeals in *John D. Park & Sons Co. v. Hartman*, supra, and, in following that case, it was concluded below that the restrictions sought to be enforced by the bill were invalid both at common law and under the act of Congress of July 2, 1890. We think that the court was right.

The allegations of the bill as to the labels and cartons used by the complainant are to the procurement of violation of the restrictions as to prices and vendees contained in the agreement; and failing as to this, no case is made for relief with respect to the trademarks, which are not shown to have been infringed.—*Extracts.*

## Pro

CONRAD H. SYME, CHARLES J. FAULKNER, JR.,  
NELSON T. HARTSON and FRANK J. HOGAN

Continued from page 211

business of handling the unrelated lines and selling meats at retail, but does not impose like restrictions on hundreds of other packers who are competitors of the defendants and who are in as favorable or in a more favorable position than are said defendants; because it denies to the defendants the right to sell meats at retail but does not deny to chain store organizations operating retail meat markets the right to engage in the packing business; because it denies to the defendants the right to handle a diversified line of products and thus reduce selling and distribution costs; and because it denies to the defendants the right to protect their business and prevent operating losses by following new and radical and nation-wide changes in marketing and distribution methods.

The decree is against the public interest, because under the conditions now existing it restrains competition, contrary to the principles of the Sherman antitrust act; because it prevents the defendants from adopting measures which would reduce their selling and distributing costs and thus enable them to sell commodities at a lower price; because it has forced the defendants and will in the future force the defendants to close and discontinue branch houses to the serious detriment of the consuming public and the independent retailer, who must have a dependable source of supply for packing-house products, and the decree is further injurious to both defendants and the public interest, in that its burdensome restrictions under modern merchandising conditions may bring about the financial destruction of the vital and essential national packers.—*Extracts see 15, p. 224.*

## Con

THE DISSENT—Cont'd from page 204

Mr. Justice Holmes

it seems to me that the point of most profitable returns marks the equilibrium of social desires, and determines the fair price in the only sense in which I can find meaning in those words. The Dr. Miles Medical Company knows better than we do what will enable it to do the best business. We must assume its retail price to be reasonable, for it is so alleged and the case is here on demurrer; so I see nothing to warrant my assuming that the public will not be served best by the company being allowed to carry out its plan. I cannot believe that in the long run the public will profit by this court permitting knaves to cut reasonable prices for some ulterior purpose of their own, and thus to impair, if not to destroy, the production and sale of articles which it is assumed to be desirable that the public should be able to get.—*Extracts.*

## Con

W. K. HENDERSON

Continued from page 211

same line of trade, and for that reason the packers should be released from the force of the decree, so that they may enter into competition with the chain stores.

The application of the packers proves what we are contending; namely, that the chain-store system is so powerful as to constitute a monopoly and should be prosecuted under the antitrust act. When the development of the chain-store system becomes a menace to the packers, God help the independent merchants.

The application of the packers brazenly states their purpose to be, to organize a larger, more extensive, and more dangerous monopoly than the attempted one which the decree enjoined. At the time the decree was entered, their activities were limited to production and wholesale distribution of food products. Now, they propose to engage in the retail business. Grant the application of the packers, and the food supply of this country will be completely under their control from production to the delivery to consumer, unless the chain stores are their competitors, and if they are, we will witness another billion dollar consolidation of the packers and chain stores.

If, as contended by the packers, the chain stores are a potential monopoly, shall the Government release another consent decreed monopoly, the packers, to feast upon the green pastures of the peoples rights, and grow fat from meager earnings of the toilers of our country?

The packers are right, in the contention that the chain store is a potential monopoly in food products, and the packers are, doubtlessly, able to materially assist in furnishing the Department of Justice the proof necessary to convict them all.

Even before the application of the packers has been considered by the court, financial publications are carrying the news that the packers are making preparations to open retail stores by the hundreds in the event the consent decree is modified, as applied for.

Any modification of the consent decree is, as said by Senator Norris, a change of legislation and the Attorney General, representing the whole people of this country—"X X X should not consent to modification of the decree, unless he would be willing to recommend that the law to the same effect be changed. The Attorney General ought to object to any change and report that fact to Congress and say that it is a matter of legislation, and that if Congress will legislate on it he will act accordingly."—(*Extracts, see 14, p. 223.*)

## State Taxation of Chain Stores

(Continued from page 197)

oly; and there is hereby levied upon each and every such person, firm or corporation, owning, operating, maintaining, or controlling a chain of stores consisting of more than five stores, the sum of \$50 for each store." The constitutionality of this law was upheld in the Fulton Superior Court on March 28, 1930.

**Indiana.**—Laws 1929, ch. 207, §5, levies a license fee "for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments." The license fees are as follows: "(1) Upon one store, the annual license fee shall be three dollars for each such store; (2) Upon two stores or more, but not to exceed five stores, the annual license fee shall be ten dollars for each such additional store; (3) Upon each store in excess of five, but not to exceed ten, the annual license fee shall be fifteen dollars for each such additional store; (4) Upon each store in excess of ten, but not to exceed twenty, the annual license fee shall be twenty dollars for each such additional store; (5) Upon each store in excess of twenty, the annual license fee shall be twenty-five dollars for each such additional store." This law was held unconstitutional on February 1, 1930 in the case of Jackson v. State Board in the district court, southern district of Indiana.

**North Carolina.**—Laws 1927, ch. 80, §162, levies a license tax of \$50 for each store of a chain of six or more

operated under the same general management in the State. This was held unconstitutional in *Great Atlantic & Pacific Tea Co., et al. v. Doughton*, 196 N. C. 145, 144 S. E. 701. Laws 1929 ch. 345 §162 enacted a new law reading as follows: "Every person, firm or corporation engaged in the business of operating or maintaining in this State, under the same general management, supervision, or ownership, two or more stores or mercantile establishments where goods, wares and/or merchandise is sold or offered for sale at retail shall be deemed a branch or chain store operator, shall apply for and obtain from the commissioner of revenue a State license for the privilege of engaging in such business of a branch or chain store operator and shall pay for such license \$50 on each and every store operated in this State in excess of one." The constitutionality of this law was upheld in the Superior Court of Wake County.

**South Carolina.**—South Carolina 1928, No. 574, §24, places an additional burden of \$100 per store on all chain stores. A chain is defined as five or more stores under the same general management. This was held unconstitutional in *Southern Groceries Stores Inc. et al. v. Tax Commission* in the court of common pleas of Richland County, February 27, 1929. (See *Corporation Tax Service*, South Carolina, digest page 78E.) The law was repealed by 1929 No. 194.—*Extracts, see 17, p. 223.*

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German Reparations  
Immigration Problem—1928  
Inland Waterways  
Limitation of Naval Armaments  
London Naval Treaty  
Lobby Problem  
Merchant Marine Act—1928  
Metric System (Should U. S. Adopt?)  
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Muscle Shoals (Gov't. Ownership)  
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Nicaragua Controversy  
Operation of U. S. Budget System  
Organization of a New Congress  
Outlawry of War  
Philippine Independence  
Presidential Election—1928  
"Pocket" Veto  
Prohibition (1930)  
Radio Reallocation  
Railroad Consolidation  
Reapportionment (Congressional)  
St. Lawrence vs. New York Shipway  
Seating a Senator  
Tariff Law (Making a)  
Tax Question (1928)  
Third Term Controversy  
Thirteen Month Year  
Uniform Marriage and Divorce Law  
U. S. Jury System (Changes)  
U. S. Supreme Court (Changes)  
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